90-1198

Supreme Court, U.S.
FILED
JAN 25 1991
JOSEPH F. SPANIOL, JR.
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1990

Case No.__________

ANTHONY J. BATOR

Appellant-Petitioner,

vs.

WASHOE COUNTY BUILDING DEPARTMENT
AND WASHOE COUNTY,
Appellee-Respondent

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEVADA AND DEPARTMENT 6 OF THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND FOR THE COUNTY OF WASHOE

APPENDIX

Anthony J. Bator
1605 Ambassador Dr.
Reno, Nevada 89503
(702) 747-3964

QUESTION PRESENTED

Has the Petitioner's Fifth and Fourteenth amendment rights to due process of law, including the right to be heard, been denied by both by Department 6 of the 2nd judicial district of the state of Nevada in and for the County of Washoe and then again in denial of his appeal, without briefing, because of his status as a pro se litigant, before the Nevada Supreme Court resulting in the Petitioner being denied the use of his property and occupation of choice.

INDEX

Question presented.....................1

Ref. to Court records and reports.....2

Jurisdiction...........................3

Statement of the case..................4

Original jurisdiction..................7

Reason for allowance of the Writ......8

Affidavits in support of the Supreme..9
Court of the State of Nevada
refusal to permit pro se
litigants an appeal from
any Court in the State of
Nevada

Appendix.............................A1

CITATIONS

CONSTITUTION OF THE UNITED STATES

WATER POLLUTION CONTROL ACT OF 1972
P.L.92-500

CLEAN WATER ACT OF 1977
P.L.92-217

CHAPTER 445 OF THE NEVADA REVISED STATUES
ENACTED TO BE INCOMPLIANCE WITH
FEDERAL P.L. 92-500 AND
P.L.92-217

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1990

Case No.__________

ANTHONY J. BATOR

Appellant-Petitioner,

vs.

WASHOE COUNTY BUILDING DEPARTMENT
AND WASHOE COUNTY,
Appellee-Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEVADA AND DEPARTMENT 6 OF THE SECOND JUDICIAL DISTRICT OF THE STATE OF NEVADA IN AND FOR THE COUNTY OF WASHOE

QUESTION PRESENTED

Has the Petitioner's Fifth and Fourteenth amendment rights to due process of law, including the right to be heard, been denied by both by Department 6 of the 2nd

judicial district of the state of Nevada in and for the County of Washoe and then again in denial of his appeal, without briefing, because of his status as a pro se litigant, before the Nevada Supreme Court resulting in the Petitioner being denied the use of his property and occupation of choice.

REFERENCES TO COURT RECORDS AND REPORTS

The Order of Department 6 of the 2nd Judicial District of the State of Nevada and the Order of the Supreme Court of the State of Nevada are included in the Appendix. As well as other important documents to petitioner's complaint. A Court Order Directing the Washoe County Building Department to issue Petitioner his building permits was denied without merit and in violation of Rule 52 of the Nevada Rules of Civil Procedure which states:

> In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon and direct the entry of the appropriate judgement

Department 6 of the District Court fails miserably in its responsibility. The Supreme Court arbitrarily dismissed the appeal from the district court without briefing for no cause other than petitioner is a pro se litigant.

(SEE 5 (FIVE) ATTACHED AFFIDAVITS SCRIBED AND SWORN BY OTHER PEOPLE WHO HAVE ATTEMPTED TO PROCEED AS PRO SE LITIGANTS BEFORE THE SUPREME COURT OF THE STATE OF NEVADA (MORE ARE AVAILABLE).

JURISDICTION

The order dismissing the appeal to the Supreme Court of the State of Nevada was filed by the Supreme Court on October 29, 1990. A timely Motion to Reconsider its order was filed on November 6,1990 and denied on December 18, 1990. A motion to

stay the Remitter was filed and ignored on December 24, 1990. On January 2, 1990 the Supreme Court of Nevada issued an order recalling the remitter until Feb. 2, 1991. This Petition for Certiorari was filed within 90 days of the denial of the Motion to Reconsider. The Jurisdiction of this court is invoked under 28 U.S.C. section 1257, and Rule 10.1 (b) and Rule 10.1 (c) of the United States Supreme Court, the 5th and 14th Amendments to the United States Constitution AND PUBLIC LAW 92-500 AND PUBLIC LAW 95-217, THE CLEAN WATER ACT.

STATEMENT OF THE CASE

This suit originated in Department 6 of the 2nd Judicial District of the State of Nevada in and for the County of Washoe as a Petition for Writ of Mandamus, against the Washoe County Building Department, **after the petitioner had exhausted his administrative remedies (see**

exhibit 1 presented during the hearing before Judge Adams of the minutes of the hearing before the board of adjustment-the original reason the suit was dismissed before the Supreme Court of the State of Nevada). The petition sought to compel the issuance of petitioners building permits. The Washoe County Building Department has denied building permits to the petitioner, because another local agency, the Washoe County District Health Department, operating outside of its jurisdiction (see letter attached to Petitioner's Writ "Exhibit C" in Appendix page A24.) , has failed and refused to obey a court order that found petitioner to be an agricultural user of the land; The Washoe County District Health Department has administratively and arbitrarily determined, using federal law applied incorrectly (Clean Water Act of 1977) that petitioner is a municipal sewage facility

receiving federal funds, subject to an intricate set of rules and permits giving them authority they do not possess to compel Petitioner to operate his farm **according to their arbitrary whims**. So outlandish are their requests and requirements, and in contradiction with federal law, which is copied by state law, that it has resulted in Bator being denied the use of his land and his occupation of choice, which is to raise domestic alligators for meat and hide which was determined by Department 4 of the 2nd Judicial District Court to be a normal agricultural user of the land. Suit was brought to compel the issuance of the requested permits. The Second Judicial District Court Judge Brent Adam's conduct in the suit was at best outlandish and prejudiced. Any findings of fact and conclusions of law which is required by the N.R.C.P. Rule 52 is grossly inadequate given the laws and

arguments introduced at the hearing. (See argument I and II in the Brief received by the Supreme Court of the State of Nevada). Due to the unwillingness of the Supreme Court of this State to hear appeals from pro se litigants Judge Adams apparently has nothing to fear in denying petitioner his rights, the use of the law and petitioner's right to be heard. And the record reflects this.

ORIGINAL JURISDICTION

Original jurisdiction is based upon petitioners 5th amendment rights, Nevada Revised Statutes 278.370 and NRS 34.170. Petitioner is being denied the use of his property by an administrative branch of government with no basis in law; without due process of law; and violations of Chapter 445 of the Nevada Revised Statues which were adopted pursuant to Federal Law P.L. 92-500 and 95-217 the Clean Water Act, for revenue sharing purposes.

REASON FOR THE ALLOWANCE OF THE WRIT

If the conduct of the judiciary is exemplified by the conduct of Brent Adams, as the record reflects, and a pro se litigant is denied a right to an appeal we have **degenerated our system of law to the rule of men**. Bator has proven with the law introduced at the hearing before Judge Adams that he, Bator, does not need a discharge permit, nor is he a municipal sewer treatment works either under state law or federal law. If the decision of Judge Adams is not reversed Petitioner Bator will never be permitted to operate his farm on his property. Bator states here for the court that the scandalous nature events that has lead to the need to obtain a court order to compel the issuance of a his building permits is not here being adjudicated. Suit will eventually be brought, either civil or criminal, seeking damages and justice for

what has been done to petitioner, however, at this time petitioner is only seeking the building permits which the county has also determined administratively I am required to obtain. If the petition is denied I will never be able to operate my farm in Washoe County, Nevada. A farm which does not threaten the health, safety or laws of the County of Washoe, State of Nevada or the Federal Government.

DATED this 18 day of January, 1991

Anthony Bator
Anthony J. Bator
Pro se

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1990

ANTHONY J. BATOR JR.)
)
Petitioner - Appellant)
)
v.)
)
WASHOE COUNTY BUILDING DEPARTMENT)
)
Respondent - Appellee)
)
WASHOE COUNTY)
Real Party in Interest)
)

AFFIDAVIT OF ERNIE ALDRIDGE

STATE OF NEVADA)
) ss:
COUNTY OF WASHOE)

I, Ernie Aldridge, being first duly sworn do hereby depose and say:

1. That I am a citizen of the State of Nevada and have been domiciled there for approximately 22 years.

2. That I have attempted to file a Writ of Prohibition in the Nevada Supreme Court, the only Court in the State of Nevada to have the Authority to file such a Writ as stated in the Constitution of

the State of Nevada.

3. That this Writ has been directed to be filed in another court, contrary to what is stated in the Nevada Constitution and my Motion To Proceed Without an Attorney was declared as moot.

4. That the Deputy Clerk has informed me that the Nevada Supreme Court does not allow Pro Se litigants to file papers before the Supreme Court, except on one occasion, when the litigant's attorney failed to show up to represent him.

FURTHER MORE I SAITH NOT.

DATED this 16 day of January, 1991

Ernest O Aldridge

Ernie Aldridge
135 Granada
Fernley, Nevada 89408

SUBSCRIBED and SWORN to before

me this 16th day of January, 1991

Diane L Bishop

NOTARY

DIANE L. BISHOP
Notary Public - State of Nevada
Appointment Recorded in Washoe County
MY APPOINTMENT EXPIRES JAN. 27, 1991

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1990

ANTHONY J. BATOR JR.)
)
Petitioner - Appellant)
)
v.)
)
WASHOE COUNTY BUILDING DEPARTMENT)
)
Respondent - Appellee)
)
WASHOE COUNTY)
Real Party in Interest)
)

AFFIDAVIT OF MARILYN O'CONNOR

STATE OF NEVADA)
) ss:
COUNTY OF WASHOE)

I, Marilyn O'Connor, being first duly sworn do hereby depose and say:

1. That I am a citizen of the State of Nevada and have been domiciled there for approximately 43 years.

2. That I have attempted to file four appeals to the Nevada Supreme Court, as a pro se litigant.

3. That all attempts have been met with the same result; Appeal dismissed

arbitrarily often without opposition from adversary and prior to any briefs being filed. Motion to proceed without an attorney, on appeal in proper person declared moot.

4. That I am personally aware of at least three other people who have met the same results.

5. That I have had this issue before this Court in a suit entitled O'connor et UX., v. Palludan Corp. #80-5061, 101 S.Ct 343, 1980. Suit was dismissed for want of Jurisdiction. (An apparent error because of misinformation presented to the court by my adversary's attorney about a suit pending in the Federal District Court of Nevada involving some issues presented in O'Connor v. Palludan Corp. (supra.) In dismissing this suit, the Nevada Supreme Court informed me that I had failed to get an attorney pursuant to Nevada Rules of Appellate procedure 46(b) which

stated;

> 46(b) Appearances in Proper Person; No party except in a habeous corpus petition may appear in proper person before the Supreme Court.

6. Since this time I have been involved in lobbying my state legislature to amend that rule. It was amended in 1981 to read;

> 46(b) Appearances in Proper Person. With leave of the Supreme Court a party may file, in proper person, written briefs and papers submitted in accordance with these rules.

7. Since this change I know of no person that has been permitted to proceed in the form of proper person before the Supreme Court of the State of Nevada except for one person, Dr. Thomas Mullis, when his attorney did not show up for a hearing.

FURTHER MORE I SAITH NOT.

DATED this 15TH day of January, 1991

Marilyn O'Connor

Marilyn O'Connor
870 Soda Lake Road
Fallon, Nevada

SUBSCRIBED and SWORN to before

me this 15. day of January, 1991

Robin Elledge

NOTARY

ROBIN ELLEDGE
Notary Public - State of Nevada
Appointment Recorded in Washoe County
MY APPOINTMENT EXPIRES JAN. 16, 1993

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1990

ANTHONY J. BATOR JR.)
)
Petitioner - Appellant)
)
v.)
)
WASHOE COUNTY BUILDING DEPARTMENT)
)
Respondent - Appellee)
)
WASHOE COUNTY)
Real Party in Interest)
)

AFFIDAVIT OF DENNIS O'CONNOR

STATE OF NEVADA)
) ss:
COUNTY OF WASHOE)

I, Dennis O'Connor, being first duly sworn do hereby depose and say:

1. That I am a citizen of the State of Nevada and have been domiciled there for approximately 37 years.

2. That I have attempted to file two appeals to the Nevada Supreme Court, as a pro se litigant.

3. That all attempts have been met with the same result; Appeal dismissed

arbitrarily often without opposition from adversary and prior to any briefs being filed. Motion to proceed without an attorney, on appeal in proper person declared moot.

4. That I am personally aware of at least three other people who have met the same results.

5. That I have had this issue before this Court in a suit entitled O'connor et UX., v. Palludan Corp. #80-5061, 101 S.Ct 343, 1980. Suit was dismissed for want of Jurisdiction. (An apparent error because of misinformation presented to the court by my adversary's attorney about a suit pending in the Federal District Court of Nevada involving some issues presented in O'Connor v. Palludan Corp. (supra.) In dismissing this suit, the Nevada Supreme Court informed me that I had failed to get an attorney pursuant to Nevada Rules of Appellate procedure 46(b) which

stated;

> 46(b) Appearances in Proper Person; No party except in a habeous corpus petition may appear in proper person before the Supreme Court.

6. Since this time I have been involved in lobbying my state legislature to amend that rule. It was amended in 1981 to read;

> 46(b) Appearances in Proper Person. With leave of the Supreme Court a party may file, in proper person, written briefs and papers submitted in accordance with these rules.

7. Since this change I know of no person that has been permitted to proceed in the form of proper person before the Supreme Court of the State of Nevada except for one person, Dr. Thomas Mullis, when his attorney did not show up for a hearing.

FURTHER MORE I SAITH NOT.

DATED this 16 day of January, 1991

Dennis O'Connor

Dennis O'Connor
870 Soda Lake Road
Fallon, Nevada

SUBSCRIBED and SWORN to before
me this 16 day of January, 1991

Stacey D. O'Farrell
NOTARY

STACEY D. O'FARRELL
Notary Public - State of Nevada
Appointment Recorded In Washoe County
MY APPOINTMENT EXPIRES MAY 16, 1992

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1990

ANTHONY J. BATOR JR.)
)
Petitioner - Appellant)
)
v.)
)
WASHOE COUNTY BUILDING DEPARTMENT)
)
Respondent - Appellee)
)
WASHOE COUNTY)
Real Party in Interest)
)

AFFIDAVIT OF PAUL L. PIPITONE

STATE OF NEVADA)
) ss:
COUNTY OF WASHOE)

I, Paul L. Pipitone, being first duly sworn do hereby depose and say:

1. That I am a citizen of the State of Nevada and have been domiciled there for approximately 8 years.

2. That I have attempted to file numerous appeals to the Nevada Supreme Court, as a pro se litigant.

3. That all attempts have been met with the same answer to wit: My motions to

proceed without an attorney have been denied as moot as the Supreme Court of the State of Nevada has summarily dismissed each suit without allowing this Petitioner or Appellant to file briefs to this Court.

4. That the Deputy Clerk has informed me on all these occasions that the Nevada Supreme Court does not allow Pro Se litigants to file papers or exercise their right to appeal as no Pro se litigant has ever appeared before the Supreme Court except on one occasion, when the litigant's attorney failed to show up to represent him.

5. That I know of other people that have had the same results.

FURTHER MORE I SAITH NOT.

DATED this 14th day of January, 1991

Paul L. Pipitone
1665 Lehigh St.
Reno, Nevada 89502

RAMONA O'DAYE
Notary Public - State of Nevada
Appointment Recorded in Washoe County
MY APPOINTMENT EXPIRES DEC. 20, 1992

SUBSCRIBED and SWORN to before
me this 14th day of January, 1991

Ramona O'Daye
NOTARY

RAMONA O'DAYE
Notary Public - State of Nevada
Appointment Recorded in Washoe County

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1990

ANTHONY J. BATOR JR.)
)
Petitioner - Appellant)
)
v.)
)
WASHOE COUNTY BUILDING DEPARTMENT)
)
Respondent - Appellee)
)
WASHOE COUNTY)
Real Party in Interest)
)

AFFIDAVIT OF ALBERT R. SALMAN

STATE OF NEVADA)
) ss:
COUNTY OF WASHOE)

I, ALBERT R. SALMAN, being duly sworn, deposes and says:

1. That I am a citizen of the State of Nevada, United States of America, and have domiciled there for thirty (30) years;

2. That I have attempted to file numerous appeals to the Supreme Court of the State of Nevada as an In Propria Personae litigant. That the most current

attempt is numbered 21704 in the Supreme Court of the State of Nevada;

3. That all my attempts have met with the same answer: ".....we deny as moot the petitioner's motion to submit briefs and papers on proper person."; and

4. That I have been previously informed by the Deputy Clerk that the Supreme Court of the State of Nevada does not allow Propria Personae litigants to file papers and/or exercise their appeal rights.

FURTHER MORE I SAITH NOT.

DATED this day of January, 1991

Albert R. Salman

ALBERT R. SALMAN
Second Judicial District
P.O. Box 7492
Reno, Nevada

SUBSCRIBED and SWORN to before

me this 16 day of January, 1991

NOTARY

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1990

Case No.__________

ANTHONY J. BATOR

Appellant-Petitioner,

vs.

WASHOE COUNTY BUILDING DEPARTMENT
AND WASHOE COUNTY,
Appellee-Respondent

APPENDIX

Anthony J. Bator
1605 Ambassador Dr.
Reno, Nevada 89503
(702) 747-3964

TABLE OF CONTENTS (APPENDIX)

PETITION FOR WRIT OF MANDAMUS...........A3

ANSWER Washoe County District Attorney.A26

JUDGEMENT, Department 6, of the Second Judicial District Court of the State of Nevada in and for the County of Washoe, Case No. CV89-7653.......................A68

MOTION TO PROCEED WITHOUT AN ATTORNEY in the SUPREME COURT OF THE STATE OF NEVADA..............................A73

BRIEF FOR THE APPELLANT................A74

ORDER DISMISSING APPEAL from the SUPREME COURT OF THE STATE OF NEVADA.......A145

Petitioners MOTION TO RECONSIDER THE ORDER DISMISSING APPEAL..................A148

Final ORDER from the SUPREME COURT OF THE STATE OF NEVADA....................A154

PETITION FOR WRIT OF MANDAMUS
FILED JANUARY 4, 1990

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND FOR THE COUNTY OF WASHOE

ANTHONY J. BATOR)
Petitioner)
)No.__________
)
vs.)PETITION FOR
) WRIT
WASHOE COUNTY BUILDING DEPT.)OF MANDAMUS
Respondent.)
)
WASHOE COUNTY)
Real Party in Interest)
________________________________)

1. Petitioner is Anthony J. Bator.

2. Respondent is Washoe County Building Dept. Responsible for the issuance of building permits.

3. Real party in interest is Washoe County acting through its District Attorney who has directed the building department not to issue building permits until petitioner complies with arbitrary operating conditions and needless requests for information attempted to

be imposed upon petitioner by the Washoe County Board of Health and previously attempted to be imposed by Washoe County Planning Department as the conditions of a "Special use permit" which this court held to be unnecessary in action CV 89-4760.

4. Petitioner has a clear, present and substantial right to performance of respondent's duty in that his submitted plans are for buildings for agricultural purposes and in respondents refusal to issue said permits are denying petitioner use of his land and his occupation of choice.

5. Petitioner is in compliance with all pertinent laws under the jurisdiction of the various departments these plans are submitted. Respondent, Washoe County Building Department, has abused its discretion by denying petitioner building permits, that would

permit petitioner to proceed with the construction of said facilities.

ORIS CORBRIDGE, in an affidavit, attached as Exhibit "A" identifies himself as the "Chief Building Inspector" of the Building and Safety Division of the Washoe County Department of Public Works. This makes ORIS CORBRIDGE the "building official" as provided in Washoe Building Code section 100.420.

Section 100.070 of the Washoe County Code amends section 303 of the Uniform Building Code and states as follows;

> Permits, Issuance
> Sec, 303. (a) Issuance. The application, plans and specifications and other data filed by an applicant for permit shall be reviewed by the building official. Such plans may be reviewed by other departments of this jurisdiction to verify compliance with any applicable laws under their jurisdiction. If the building official finds that the work described in an application for a permit and the plans, specifications and other data filed therewith conform to the requirements of this code and other

> pertinent laws and ordinances, that the fees specified in section 100.075 of this code have been paid, and the written confirmation required by section 100.065 of this code has been submitted, he shall issue a permit therefor to the applicant."

Therefore, ORIS CORBRIDGE as the building official has the duty to determine the applicable law and ordinances that would require him to withhold said permits.

Petitioner has asked for, but never received, from the Washoe County Building Department, of which ORIS CORBRIDGE is the designated "building official", any law or ordinance that supports the withholding of said building permit.

ORIS CORBRIDGE, in his Affidavit, attempts to shift his duty as stated in the Washoe County Code section 100.070 to other departments of the county. Petitioner, Anthony J Bator, understands that the "building official" may not be

familiar with all of the laws and ordinances pertaining to his duties but in such circumstances he should request and obtain a legal opinion in writing from the legal entity voicing such concern along with the appropriate laws and ordinances that would support his denial of issuing said court ordered permits. Upon request of the petitioner, from the appropriate entities involved no such laws or ordinances have been supplied.

Petitioner because of his unlawful denial has been compelled to research the applicable law pertaining to claims made by the Washoe County Health Department in its letter dated October 25,1989 and attached as Exhibit "B". The applicable law regarding discharges is the Water Pollution Control Act of 1972; Public Law 92-500, a revenue sharing Act between the Federal Government and the State of Nevada. This legislation P.L. 92-500 in

section 208 dealing with "Area Wide Waste Treatment Management" identifies in subsection 208(b)(2)(F) "agriculture" as a "non-point source of pollution" and the State of Nevada in enacting its own legislation followed this federal legislation by equating "diffuse source" as provided in NRS 445.147 with the federal definition of "non-point source".

Attached as Exhibit "D" is the STATE OF NEVADA REGULATION FOR CONTROL OF WATER POLLUTION FROM DIFFUSE SOURCES. Equating these regulations to the Nevada Administrative Code section 445.210 "Administration of controls by municipality: Jurisdiction." it is stated as follows;

> "The municipality may apply specific measures of control only for those surface waters within its jurisdiction in which pollution from a diffuse source has been determined to contribute to a violation of standards for water quality." (emphasis added)

And in section 445.211 which deals

with the "Administration of controls by municipality: Determination of Water Pollution" it is stated in section 1 and 2 as follows;

> "1. If a municipality has been delegated authority to administer controls from diffuse sources, it must establish a program to administer the controls. The municipality may proceed with the administration only if its governing body or the division first determines that there exists within or originates from the territory of the municipality water pollution from one or more diffuse sources and the pollution contributes to a violation of standards for water quality."

> "2. Such a determination must be based on the results surveying, sampling or testing the affected surface waters or pursuant to a written complaint by any person filed with the municipality and proof of damage to him caused by pollution of those waters from a diffuse source.
>
> Any similar complaint filed with the division or the state agency must be immediately referred to the appropriate municipality for prompt investigation and disposition.

It is clear that none of these requirements have been complied with, and

the required determinations that must be made upon a factual basis do not exist. Attached as Exhibit "C" is a letter from Chief, Permits and Compliance RICHARD E. REAVIS of the STATE DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES DIVISION OF ENVIRONMENTAL PROTECTION stating that delegation for the NATIONAL POLLUTION DISCHARGE ELIMINATION SYSTEM permits program has not been delegated to the Washoe County Health Department or any other government agency.

Washoe County Health Departments claim that Petitioner is operating a Treatment Works is unsubstantiated. ORIS CORBRIDGE has been notified that the definition of "Treatment Works" under federal law is defined in P.L. 92-500 Section 212(2)(A)

> "any devices used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature to implement section 201 of this Act"

Section 201 of P.L.92-500 is the opening section of "TITLE II-GRANTS FOR CONSTRUCTION OF TREATMENT WORKS". Petitioner states that he is and never will receive any federal funds.

In the NRS 445.186

> "Treatment Works" means:
> 1. Any device and system used in the storage, treatment, recycling and reclamation of municipal sewage or industrial wastes of a liquid nature, including intercepting sewers, outfall sewers, sewage collection systems, pumping, power and other equipment and their appurtenances;

Petitioner further states in NRS Chapter 202 Titled "CRIMES AGAINST PUBLIC HEALTH AND SAFETY" section 202.450(4) states:

> "4. Agricultural activity conducted on farmland consistent with good agricultural practice and established before surrounding nonagricultural activities is not a public nuisance unless it has a substantial adverse affect on the public health or safety. It is presumed that an agricultural activity which does not violate a federal, state or local law, ordinance

> or regulation constitutes good agricultural practice."

Petitioner cannot at this time be guilty of any adverse affects upon the Public Health because the Washoe County Building Department has stopped him from building his facilities.

6. Petitioner has no plain, speedy, and adequate remedy in the ordinary course of law, other than the relief sought in this petition.

CONCLUSION

Administrators of Washoe County Government have no jurisdiction to manage Petitioners farm or deny Petitioner, Bator, his building permits, and in attempting to do so they are denying Petitioner the use of his land, his occupation of choice, his inalienable rights and equal protection of the law as provided in the 14th Amendment to the Constitution of the United States.

WHEREFORE, Petitioner prays:

1. That the court issue an alternate Writ of Mandamus commanding the respondent to issue the demanded building permits or show cause before this court at a time specified by court order why it has not done so and why a peremptory writ should not issue.

2. That on the return of the alternative writ ant the hearing of this petition, this court issue its peremptory writ of Mandamus commanding respondent to issue the building permits.

3. For the return of the $200.00 hearing fee and costs of this proceeding.

Dated: December 26,1989

Petitioner, pro se

VERIFICATION

I, Anthony J. Bator, am the petitioner in this proceeding. I have

prepared the foregoing petition and know the contents thereof.

____

SUBSCRIBED and SWORN to before me

this _________ day of ___________1989.

____

NOTARY PUBLIC

EXHIBIT "A"

AFFIDAVIT

STATE OF NEVADA)
: ss.
COUNTY OF WASHOE)

ORIS CORBRIDGE, being first duly sworn under penalty of perjury deposes and says:

1. I am the Chief Building Inspector of the Building and Safety Division of the Washoe County Department of Public Works.

2. Upon receipt of the Order issued on October 17, 1989, by the Honorable Roy Torvinen, District Judge, in the case of Anthony J. Bator, Jr v. Washoe County Building Department, (No. CV89-4760), I reviewed said Order and have fully complied with it to the best of my knowledge, ability and understanding as follows:

a. Mr. Bator's application for a building permit for farm structures on his

forty-acre parcel of property has been considered by this Division and has been processed as would any other application for a building permit, without reference to any necessity of his first obtaining a special use permit from the Washoe County Board of Adjustment.

b. In accordance with this, the Washoe County Department of Comprehensive Planning has signed off on Mr. Bator's plans for the structures with respect to the zoning issues.

c. Said plans have been forwarded to the District Health Department for its review in accordance with normal building permit application procedures under the Uniform Building Code as adopted by Washoe County. (Chapter 100 of the Washoe County Code).

d. As noted by the letter attached hereto as Exhibit "A", the District Health Department has thus far not approved Mr.

Bator's plans as said plans are incomplete as submitted.

e. . Until the concerns of the District Health Department are addressed and the plans are approved by said Department, this office cannot issue a building permit to Mr. Bator for his farm structures.

DATED this 16 day of November, 1989.

ORIS CORBRIDGE

Subscribed and Sworn to before me
this 16 day of November, 1989.

NOTARY PUBLIC

EXHIBIT "B"

DISTRICT HEALTH DEPARTMENT
October 25, 1989

Anthony J. Bator
1605 Ambassador Drive
Reno, Nevada 89523

RE: Building permit Plan Review for an
Alligator Rearing Facility

Dear Mr. Bator:

This department has the authority under Federal, State and local regulations to review and approve developments in terms of solid waste, waste water disposal, water supply and water quality, air pollution and odor controls, vector control, as well as other environmental concerns.

The plans submitted are incomplete and do not contain adequate information for a proper review. In an attempt to expedite this project, staff has contacted a number of experts who have provided information

that allowed some additional review of the reference project.

The referenced project has changed somewhat since the original proposal in April of this year. Based upon conversations with these experts, correspondence, and the incomplete plans submitted on October 23,1989, the following is a summary of the proposed operations:

1. The proposed alligator rearing facility will handle 1,000 to 2,000 alligators in a series of round concrete tanks with domed roofs.

2. The water source for the proposed operation are two wells on the property. the wells are to supply water for filling and washing down the alligator tanks and for domestic water for the proposed house. The alligator tanks are proposed to be heated with the geothermal well on site. No plan has been submitted on the heating system. The applicant has

not submitted proof of water rights with the construction permit application or a geothermal disposal plan.

3. The proposed alligator food is to be fish, chicken, horse or beef. A five to six foot alligator will eat between three (3) and four (4) pounds of meat daily. With 1,000 to 2,000 alligators on site, an operation plan must be developed for hauling, storing and handling a large quantity of meat without posing a nuisance or health hazard. No information on this phase of the operation has been submitted.

4. The alligator tanks are proposed to be drained once daily into two (2) settling ponds. The ponds are proposed to be operated under anaerobic condition. Anaerobic lagoon, with or without primary settling, have a high potential for severe odor problems. No lining is specified for the settling ponds. The soils in the area have fast percolation rates. Any leakage

from the lagoons will have a high potential of ground water pollution. The tank discharge will be comprised of water, alligator excrement, urine and alligator food residue.

Section 120.005 of the Washoe County District Board of Health Regulations Governing Sewage, Waste water and Sanitation states that all sewage, grey water and waste water management methods not specifically authorized by these regulations must be approved by the District Health Department.

As states above, the referenced plans are incomplete as submitted and therefore cannot be approved at this time. Before the District Health Department can complete our review of the proposed facilities, the following items must be submitted to this office:

1. A discharge permit from the State Division of Environmental Protection

is required and must be obtained before the District Health Department will approve any administrative permits for the proposed facility.

2. A complete operation plan addressing the above items. The operation plan must include:

a. The alligator food hauling, storage, and handling facilities.

b. The liquid waste quality and discharge rates for each phase of the operation.

c. A solid waste and/or sludge disposal plan including water balance and nutrient loading versus plant uptake calculations.

3. The construction plans must incorporate the above information into the design of the facilities.

4. The construction plans must be submitted to the State Division of Environmental Protection.

If there are any questions, please contact me at 328-2430

Sincerely

Douglas L. Coulter
Environmental Engineer
Environmental Health Services
DLC:sw

cc:
Carl Cahill
Jim Begbie
L.H.Dodgion, DEP
Al Porta, DEP
Wendell McCurry, DEP
Julian Balowski, DEP
Brent Carithers, Building Dept.
Rusty Nash, District Attorney's Office
District Judge Roy Torvinen

EXHIBIT "C"
DATED DECEMBER 19, 1989

DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES

DIVISION OF ENVIRONMENTAL PROTECTION
201 South fall Street
Carson City, Nevada 89710

December 19, 1989

Tony Bator
1605 Ambassador Dr.
Reno, NV 89502

Dear Mr. Bator

In response to your inquiry, the federal Environmental Protection Agency has delegated administration of the National Pollution Discharge Elimination System permits program to the Nevada Division of Environmental Protection. This responsibility has not been re-delegated to any other state of local agency.

I hope that this information adequately responds to your question.

Sincerely,

Richard E. Reavis
Chief, Permits and Compliance
RER/srb:1

EXHIBIT "D"

STATE OF NEVADA
REGULATION FOR CONTROL OF
WATER POLLUTION FROM
DIFFUSE SOURCES

NEVADA DIVISION OF ENVIRONMENTAL PROTECTION

TEXT OMITTED BUT SUPPLIED IN DISTRICT COURT AND IS A MATTER OF COURT RECORDS.

ANSWER by Respondent
DATED JANUARY 25, 1990

No. CV89-7653
Dept. No. 6

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND FOR THE COUNTY OF WASHOE

ANTHONY J. BATOR JR.,

Petitioner,

v.

ANSWER

WASHOE COUNTY BUILDING DEPT.,

Respondent.

WASHOE COUNTY

Real Party in Interest

COMES NOW the above named Respondent, by and through the Office of the District Attorney of Washoe County, its attorney, and in answer to Petitioner's Petition for Writ of Mandamus on file herein, admits denies and alleges as follows:

1. Admits the allegation contained in paragraph 1.

2. Admits that the Building and Safety Division of the Washoe County Department of Public Works is responsible for the review of applications for building permits and the issuance thereof if such applications are in conformance with various, state and federal requirements including, but not limited to, State and local health regulations.

3. Admits that it cannot issue a building permit to Petitioner unless and until the plans thereof are approved by the Washoe County District Health Department as being in conformance with State and local regulations.

4. Denies that Petitioner has a clear, present and substantial right to the issuance of a building permit at the present time, and instead alleges that the Petitioner has no right to the issuance

of a building permit unless and until it is determined that the application therefor is in conformance with any and all applicable county, state and federal requirements. Denies the remaining allegations of Paragraph 4 of Petitioner's Petition.

5. Denies that "Petitioner is in compliance with all pertinent laws under the jurisdiction of the various departments these plans are submitted." Denies that "Respondent, Washoe County Building Department, has abused its discretion by denying petitioner building permits, that would permit petitioner to proceed with construction of said facilities." Admits that "Oris Corbridge in an affidavit, attached as Exhibit A identifies himself as the Chief Building Inspector of the Building and Safety Division of the Washoe County Department of Public Works."
Admits that "This makes Oris Corbridge the

building official as provided in Washoe Building Code section 100.420." Admits that "Section 100.070 of the Washoe County Code amends section 303 of the Uniform Building Code and states as follows;

> 'Permits, issuance
> Sec, 303. (a) Issuance. The application, plans and specifications and other data filed by an applicant for permit shall be reviewed by the building official. Such plans may be reviewed by other departments of this jurisdiction to verify compliance with any applicable laws under their jurisdiction. If the building official finds the work described in the application for a permit and the plans, specifications and other data filed therewith conform to the requirements of this code and other pertinent laws and ordinances, that the fees specified in section 100.075 of this code have been paid, and the written confirmation required by section 100.065 of this code has been submitted, he shall issue a permit therefor to the applicant."

Denies that "Therefore, ORIS CORBRIDGE as the building official has the duty to determine the applicable law and ordinances that would require him to withhold said permits." Respondent instead

alleges, as specifically provided for in Section 100.070 of the Washoe County Code, that the plans submitted by an applicant for a building permit "may be reviewed by other departments of this jurisdiction to verify compliance with any applicable laws under their jurisdiction;" and ORIS CORBRIDGE, as the building official, has not only the right but the legal obligation thereunder to rely upon the advice of such other departments with respect to compliance with any applicable laws, ordinances or regulations under their jurisdiction.

The remaining allegations contained in Paragraph 5 are not readily susceptible to standard admissions or denials in that they are basically legal arguments rather than factual allegations, which Respondent has addressed, to the extent necessary, in its Memorandum of Points and Authorities in Opposition to Petitioner's

Application for Writ of Mandamus, which will be filed in conjunction with this Answer.

6. Denies the allegations of Paragraph 6 of Petitioner's Petition.

WHEREFORE, Respondent prays for judgement as follows:

1. That Petitioner take nothing by reason of its Petition on file herein; and

2. That Petitioner's Petition be dismissed forthwith with prejudice; and

3. That the Alternative Writ of Mandamus granted herein be discharged; and

4. That the Respondent be awarded reasonable attorney's fees and costs of suit; and

5. For such other and further relief as the Court may deem just and proper.

DATED this 22nd day of January, 1990.]

MILLS LANE

Washoe County District Attorney

By______________________________
RUSSELL S. NASH Jr.
Deputy District Attorney
P.O. Box 11130
Reno, Nevada 89520

ATTORNEY FOR RESPONDENT

STATE OF NEVADA)
: ss.
COUNTY OF WASHOE)

ORIS L. CORBRIDGE, being first duly sworn, on oath deposes and says: That he is the Chief Building Inspector for Washoe County, the Respondent in the above entitled matter; that he has read the above and foregoing Answer and knows the contents thereof; that the same is true of his own knowledge, except for any matters therein alleged on information and belief, and as to those matters he believes them to be true.

____
RESPONDENT

Subscribed and sworn to before me

this 25 day of January, 1990

____
NOTARY PUBLIC in and for said

County and State

MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO PETITIONER'S APPLICATION FOR WRIT OF MANDAMUS

DATED JANUARY 25, 1990

No. CV89-7653

Dept. No. 6

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND FOR THE COUNTY OF WASHOE

ANTHONY J. BATOR JR.,

Petitioner,

v.

MEMORANDUM OF
POINTS AND AUTHORITIES
IN OPPOSITION TO
PETITIONER'S APPLICATION
FOR A WRIT OF MANDAMUS

WASHOE COUNTY BUILDING DEPT.,

Respondent.

WASHOE COUNTY

Real Party in Interest

I

STATEMENT OF FACTS

Petitioner, Anthony J. Bator Jr., is the owner of a parcel of property approximately 40.96 acres in size in an A-7 (Third Rural Conservation) zone, located in Section 26,T22N, R20E, MDB&M, Washoe County, Nevada. The physical address of the property is 7000 Winnemucca Ranch Road, and it is located in an area commonly known as Palomino Valley (Warm Springs Valley) off Pyramid Lake Highway. Petitioner wishes to construct and operate an alligator farm, consisting of 11 circular facilities housing a maximum of approximately 2,000 alligators, for the purpose of raising alligators for meat and hide; and he has submitted an application for a building permit therefor with the Building and Safety Division of the Washoe County Department of Public Works.

As noted by the Affidavit of Oris Corbridge, Chief Building Inspector, which

is attached thereto, Mr. Bator's application for said building permit has been processed by his Division as would any other application for a building permit. The normal building permit application procedures under the Uniform Building Code as adopted by Washoe County (Chapter 100 of the Washoe County Code) provide for the review of plans by other agencies to verify compliance with any applicable laws under their jurisdiction. One of those normal reviewing agencies is the Washoe County District Health Department which, incidently, is not a County Department but a separate legal entity governed by the District Board of Health.

The District Health Department has thus far not approved Mr. Bator's plans because said plans are incomplete under state law and the regulations adopted thereunder by the District Board of Health. The letter to Mr. Bator dated

October 25, 1989, from Doug L. Coulter, Environmental Engineer for the District Health Department, a copy of which is attached to Oris Corbridge's Affidavit as Exhibit "A", clearly spells out the Health Department's concerns and the steps necessary to satisfy those concerns. One of the major deficiencies, as noted by the letter from the Nevada Division of Environmental Protection to Petitioner dated July 17, 1989, a copy of which is attached to Oris Corbridge's Affidavit as Exhibit "B", is the need to obtain a discharge permit for the proposed alligator raising facility. As noted by said letter, the construction of any treatment works cannot be initiated without the issuance of a discharge permit and the approval of plans and specifications therefor. To date, the District Health Department has been advised that Petitioner has neither applied for nor been

issued the discharge permit required by the Nevada Division of Environmental Protection. Unless and until Mr. Bator addresses those concerns, which he has been aware of for many months, the District Health Department will not approve his plans and sign off on his building permit application. Without the approval of the District Health Department, the Washoe County Building Department cannot, in accordance with the Uniform Building Code (Chapter 100 of the Washoe County Code), issue Mr. Bator a building permit for his farm buildings. As soon as Mr. Bator secures the approval of the District Health Department, the Washoe County Building Department will issue him his building permit.

II

ISSUES

1. Does Petitioner have a plain,

speedy and adequate remedy in the ordinary course of law?

2. Is Petitioner entitled to the issuance of a building permit in spite of the refusal of the Washoe County Health Department to approve the plans therefor.

3. Should Petitioner be required to seek relief against the proper parties, i.e., the Nevada Division of Environmental Protection and the Washoe County District Health Department, rather than against the Washoe County Building Department?

III

ARGUMENT

1. MANDAMUS IS NOT A PROPER REMEDY BECAUSE PETITIONER HAS A PLAIN SPEEDY AND ADEQUATE REMEDY AT LAW

State law provides a simple procedure for attempting to resolve disputes such as we have herein prior to resort to the courts. NRS 278.300 provides in pertinent part as follows:

> "278.300 Powers.
>
> 1. The board of adjustment shall have the following powers:
>
> (a) To hear and decide appeals where it is alleged by the appellant that there is an error in and order, requirement, decision or refusal made by a administrative official or agency based on or made in the enforcement of any zoning regulation or any regulation relating to the location or soundness of structures.
>
> 2. The majority vote of the board of adjustment is necessary to reverse any order, requirement, decision or determination of any administrative official or agency, or to decide in favor of the appellant."

NRS 278.310 (1) (a) goes on to provide as follows:

> "278.310 Appeals to board of adjustment:
> Who may appeal; procedure.
> 1. Appeals to the board of adjustment may be taken by:
> (a) Any person aggrieved by his inability to obtain a building permit, or by the decision of any administrative officer or agency based upon or made in the course of the administration or enforcement of the provisions of any zoning regulation or any regulation relating to the location or soundness structures."

Petitioner is clearly a person aggrieved by his inability to obtain a building permit because of the decision of an administrative officer of agency. (The Building and Safety Division of the Washoe County Department of Public Works) based upon or made in the course of the administration or enforcement of the provisions of any regulation relating to the location or soundness of structures (Chapter 100 of the Washoe County Code). Petitioner's failure to appeal the Building Official's decision to the Board of Adjustment renders this controversy unripe for

judicial determination at this time.

Since Petitioner has clearly not exhausted his administrative remedies and, in fact, has a plain, speedy and adequate remedy of law, his Petition for Mandamus is premature and should be dismissed forthwith. As provided in NRS 34.170, Mandamus is available only in those cases where there is not a plain, speedy and adequate remedy in the ordinary course of law. County of Washoe v. City of Reno,77 Nev. 152, 360 P.2d 602 (1961); State ex rel. Schumacher v. First Judicial Dist. Court, 77 Nev.408, 365 P.2d 646 (1961): Trelease v. State ex rel. Bullock, 88 Nev. 615, 503 P,2d 1 (1973).

2. THE BUILDING CODE REQUIRES THE ISSUANCE OF A BUILDING PERMIT ONLY IF THE BUILDING OFFICIAL FINDS THAT THE WORK DESCRIBED IN AN APPLICATION FOR A PERMIT AND THE PLANS, SPECIFICATIONS AND OTHER DATA FILED THEREWITH CONFORM TO THE REQUIRE-

MENTS OF THE BUILDING CODE AND OTHER PERTINENT LAWS AND ORDINANCES.

Section 100.070 of the Washoe County Code amends section 303 of the Uniform Building Code and provides as follows;

> "Permits, Issuance
>
> Sec, 303. (a) Issuance. The application, plans and specifications and other data filed by an applicant for permit shall be reviewed by the building official. Such plans may be reviewed by other departments of this jurisdiction to verify compliance with any applicable laws under their jurisdiction. If the building official finds that the work described in a application and other data filed therewith conform to the requirements of this code and other pertinent laws and ordinances, that the fees specified in section 100.075 of this code have been paid, and the written confirmation required by section 100.065 of this code has been submitted, he shall issue a permit therefor to the applicant." (Emphasis added).

The above quoted section clearly requires a finding by the building official that the work described in an application for a permit, and the plans,

specifications and other data filed therewith conforms not only t the requirements of the building code but to other pertinent laws and ordinances. Said section also clearly provides that the building official may have such plans reviewed by other departments to ensure compliance with any applicable laws under their jurisdiction.

As noted previously, Petitioner's application for a building permit has been processed in accordance with the provisions of Section 100.070 of the Washoe County Code, just as all such applications are. The application has been sent to the Washoe County District Health Department to verify compliance with the applicable laws, ordinances and regulations under their jurisdiction.

Pursuant to NRS 439.150 the State Board o Health is declared to be "supreme in all nonadministrative health matters."

It has general supervision over all matters, except for nonadministrative health matters, "relating to the preservation of the health and lives of citizens of the state and over work of the state health officer and all local (district, county and city) health departments, boards of health and health officers."

Pursuant to NRS 439.370, the board of county commissioners and the governing bodies of any incorporated cities in such county may, with the approval of the state board of health, create a health district health officer and a district board of health. Pursuant to NRS 439.410, a district board of health may adopt regulations, subject to the approval of the state board of health, to:

> "(a) Prevent and control nuisances;
> (b) Regulate sanitation and sanitary practices in the interest of the public health;
> (c) Provide for the sanitary protection of water and food supplies; and
> (d) Protect and promote the public

> health generally in the geographical area subject to the jurisdiction of the health district."

Pursuant to the above, Washoe County, and the cities of Reno and Sparks, have created the Washoe County District Health Department, governed by the District Board of Health; and the District Board of Health has adopted extensive regulations pursuant to NRS 439.410, which regulations have been approved by the state board of health. As noted in the October 25, 1989 letter from Douglas F. Coulter, Environmental Engineer for the Washoe County District Health Department, to Petitioner, the Department "has the authority under Federal, State and local regulations to review and approve developments in terms of solid waste, waste water disposal, water supply and water quality, air pollution and odor controls, vector control, as well as other environmental concerns."

Pursuant to the above-cited authority, the District Health Department has thus far not approved Petitioner's plans because said plans are incomplete under state law and regulations adopted thereunder by the District Board of Health. One of the major deficiencies, as noted by the letter from the Nevada Division of Environmental Protection to Petitioner dated July 17, 1989, a copy of which is attached to Oris Corbridge's Affidavit as Exhibit "B", is the need to obtain a discharge permit for the proposed alligator rearing facility. As noted by said letter, the construction of any treatment works cannot be initiated without the issuance of a discharge permit and approval of plans and specifications therefor. To date, the District Health Department has been advised that Petitioner has neither applied for nor been issued the discharge permit required

by the Nevada Division of Environmental Protection. Unless, and until the concerns of the Washoe County District Health Department and the Nevada Division of Environmental Protection are addressed and the plans are approved by said Department, the County cannot legally issue a building permit to Petitioner for his proposed alligator facility.

III

PETITIONER'S CONCERNS ARE DIRECTED AGAINST THE STATE DIVISION OF ENVIRONMENTAL PROTECTION AND THE WASHOE COUNTY DISTRICT HEALTH DEPARTMENT, AND HE SHOULD ADDRESS SAID CONCERNS TO THEM, NOT THE WASHOE COUNTY BUILDING DEPARTMENT.

The Building Department is bound by the provisions of federal, state and local laws, ordinances and regulations, not just the narrow technical provisions of the Building Code. Pursuant to the provisions of Section 100.070 of the Washoe County

Code, the building official cannot issue a building permit without finding that the work described in an application for a permit, and the plans, specifications and other data filed therewith conforms not only to the requirements of the building code but to other pertinent laws and ordinances. Said section clearly provides that the building official may have such plans reviewed by other departments to ensure compliance with any applicable laws under their jurisdiction. The building official's reliance on the guidance of such other departments is clearly reasonable. In fact, to have referred the matter to the Washoe County District Health Department for its review and then to ignore its conclusion that the application does not conform to laws, ordinances and regulations under its jurisdiction would clearly have been arbitrary and capricous.

There are administrative remedies

available to Petitioner, both with respect to the Nevada Division of Environmental Protection and to the Washoe County District Health Department. Should Petitioner be unable to satisfactorily address his concerns through appropriate administrative review of the conclusions of the State Division of Environmental Protection and the Washoe County District Health Department, then judicial relief therefrom should properly be sought against the appropriate entity, not the Washoe County Building Department.

IV

CONCLUSION

In accordance with the above, it is respectfully submitted that the Petitioner's Petition should be dismissed with prejudice and the Alternative Writ of Mandamus granted herein should be discharged.

DATED this 25th day of January, 1990.

MILLS LANE

Washoe County District Attorney

By________________________________
RUSSELL S. NASH, JR.
Deputy District Attorney
P.O.Box 11130
Reno, Nevada 89520
ATTORNEY FOR RESPONDENT

AFFIDAVIT

STATE OF NEVADA)
                : ss.
COUNTY OF WASHOE)

ORIS CORBRIDGE, being duly sworn under penalty of perjury, deposes and says:

1. I am the Chief Building Inspector of the Building and Safety Division of the Washoe County Department of Public Works.

2. Mr. Bator's application for a building permit for farm structures on his forty-acre parcel of property has been considered by this Division and has been processed as would any other application

for a building permit.

3. In accordance therewith, said plans have been forwarded to the Washoe County District Health Department for its review in accordance with normal building permit application procedures under the Uniform Building Code as adopted by Washoe County. (Chapter 100 of the Washoe County Code).

4. As noted by the letter from the Washoe County District Health Department to Petitioner dated October 25, 1989, a copy of which is attached hereto as Exhibit "A", the Washoe County District Health Department has thus far not approved Mr. Bator's plans as said plans are incomplete as submitted.

5. As noted by the letter from the Nevada Division of Environmental Protection to Petitioner dated July 17, 1989, a copy of which is attached hereto as Exhibit "B", Petitioner was long ago

advised by the State of its requirement that he obtain a discharge permit for the proposed alligator rearing facility and that construction of any treatment works could not be initiated without the issuance of such a discharge permit and approval of plans and specifications therefor.

6. As noted by the subsequent letter from Petitioner to the Nevada Department of Environmental Protection, a copy of which is attached as Exhibit "C", it is obvious that Petitioner feels that the Nevada Division of Environmental Protection has no jurisdiction over him or his proposed alligator rearing facility; and in spite of language therein suggesting the payment by petitioner under protest of a fee for a discharge permit, Affiant has been informed that to date Petitioner has neither applied for nor been issued the discharge permit required

by the Nevada Division of Environmental Protection.

7. Until the concerns of the Washoe County District Health Department and the Nevada Division of Environmental Protection are addressed and the plans are approved by said Department, this office cannot issue a building permit to Mr. Bator for his farm structures.

DATED this 25th day of January, 1990

ORIS CORBRIDGE

Subscribed and sworn to before me
this 25th day of January, 1990

NOTARY PUBLIC

EXHIBIT "A"

DISTRICT HEALTH DEPARTMENT
October 25, 1989

Anthony J. Bator
1605 Ambassador Drive
Reno, Nevada 89523

RE: Building permit Plan Review for an
Alligator Rearing Facility

Dear Mr. Bator:

This department has the authority under Federal, State and local regulations to review and approve developments in terms of solid waste, waste water disposal, water supply and water quality, air pollution and odor controls, vector control, as well as other environmental concerns.

The plans submitted are incomplete and do not contain adequate information for a proper review. In an attempt to expedite this project, staff has contacted a number of experts who have provided information

that allowed some additional review of the reference project.

The referenced project has changed somewhat since the original proposal in April of this year. Based upon conversations with these experts, correspondence, and the incomplete plans submitted on October 23,1989, the following is a summary of the proposed operations:

1. The proposed alligator rearing facility will handle 1,000 to 2,000 alligators in a series of round concrete tanks with domed roofs.

2. The water source for the proposed operation are two wells on the property. the wells are to supply water for filling and washing down the alligator tanks and for domestic water for the proposed house. The alligator tanks are proposed to be heated with the geothermal well on site. No plan has been submitted on the heating system. The applicant has

not submitted proof of water rights with the construction permit application or a geothermal disposal plan.

3. The proposed alligator food is to be fish, chicken, horse or beef. A five to six foot alligator will eat between three (3) and four (4) pounds of meat daily. With 1,000 to 2,000 alligators on site, an operation plan must be developed for hauling, storing and handling a large quantity of meat without posing a nuisance or health hazard. No information on this phase of the operation has been submitted.

4. The alligator tanks are proposed to be drained once daily into two (2) settling ponds. The ponds are proposed to be operated under anaerobic condition. Anaerobic lagoon, with or without primary settling, have a high potential for severe odor problems. No lining is specified for the settling ponds. The soils in the area have fast percolation rates. Any leakage

from the lagoons will have a high potential of ground water pollution. The tank discharge will be comprised of water, alligator excrement, urine and alligator food residue.

Section 120.005 of the Washoe County District Board of Health Regulations Governing Sewage, Waste water and Sanitation states that all sewage, grey water and waste water management methods not specifically authorized by these regulations must be approved by the District Health Department.

As states above, the referenced plans are incomplete as submitted and therefore cannot be approved at this time. Before the District Health Department can complete our review of the proposed facilities, the following items must be submitted to this office:

1. A discharge permit from the State Division of Environmental Protection

is required and must be obtained before the District Health Department will approve any administrative permits for the proposed facility.

2. A complete operation plan addressing the above items. The operation plan must include:

a. The alligator food hauling, storage, and handling facilities.

b. The liquid waste quality and discharge rates for each phase of the operation.

c. A solid waste and/or sludge disposal plan including water balance and nutrient loading versus plant uptake calculations.

3. The construction plans must incorporate the above information into the design of the facilities.

4. The construction plans must be submitted to the State Division of Environmental Protection.

If there are any questions, please contact me at 328-2430

Sincerely

Douglas L. Coulter
Environmental Engineer
Environmental Health Services

DLC:sw
cc:
Carl Cahill
Jim Begbie
L.H.Dodgion, DEP
Al Porta, DEP
Wendell McCurry, DEP
Julian Balowski, DEP
Brent Carithers, Building Dept.
Rusty Nash, District Attorney's Office
District Judge Roy Torvinen

EXHIBIT "B"

Department of Environmental Protection

July 17,1989

Anthony J. Bator Jr.
1605 Ambassador Dr.
Reno, Nevada 89523

RE: Alligator Rearing Facility, Palomino Valley

Dear Mr. Bator:

After further discussion with several persons in this office, it has been decided a discharge permit for the proposed facility is required.

Flow volumes of diluted effluent to be directed to the irrigation site surrounding this project will be large enough to warrant permit issuance. It is not known at this time what concentrations of pollutants will be contained in this blended reuse water.

After discussion with Dr. Cardiac of the University of Florida in Gains-

ville, it was learned that approximately 450 lbs of solids (dry weight) per day could be generated at the proposed site and that the domes used for rearing are normally washed down daily after emptying. Flows to any treatment works will more likely be over 5000 gallons per day and probably will approach 10,000 gallons per day if this maintenance frequency is to continue. The amount of solids generated induces a concern over proper treatment and odor generation. Dr. Cardiac also indicated that facilities in the southern states which have septic tanks up gradient of the polishing ponds have less odor problems than sites which only use polishing ponds. Solids removal will be necessary on periodic basis with any system which is proposed. The organic loading of polishing pond is not known. The dilution of the effluent may differ throughout the year depending on irriga-

tion demand and disposal conditions.

I forwarded you an application for a groundwater discharge permit and a fee schedule last week. The application is to be filled out and submitted with a $200.00 processing fee if the proposal is still to be carried out. The permit process will take at least 60 days to complete. Construction of any treatment works can not be initiated without the issuance of a discharge permit and approval of plans and specifications.

Do not hesitate to contact me with any questions at (702) 885-4670.

Sincerely

Julian P. Bielawski, P.E.
Environmental Engineer
Water Quality Section
JPB/srb:6
Enclosure

cc: L.H. Dodgion
Al Porta
Wendell McCurry
Doug Colter

EXHIBIT "C"

Anthony J. Bator Jr.
1605 Ambassador Dr.
Reno, Nevada 89523
(702) 747-3964

Julian Bielawski
Wendall McCurry
Department of Environmental Protection
201 South Fall Street
Carson City, Nevada 89710

RE: Description of Alligator Rearing Facilities, Palomino Valley

Dear Mr. Bielawski and Mr. McCurry,

After our conversations over the phone the past several days and having read the statutes governing the operations of a facility requiring a EPA discharge permit I have come to a firm conclusion that I am not a person required to have one.

I have submitted to you an plan of operation as a courtesy to both you and your agency in an attempt to display that I am not so required. I am involved in a agricultural business which is done as a matter of right and accept the responsibility of a freeman, that I am responsible

for damages done to other freemen. I am not discharging any materials to a public water way nor upon anybody else's property. It appears to me that this was the intent of these statutes. As to whether I would be dumping foreign matter into the ground water supply this is highly unlikely as the static water table is 78 foot deep and the ground in this area is quite dry. As far as treating my operation unlike any other agricultural endeavor I feel that I have been selected for inspection and regulation without regard for my rights to an occupation of common right in a manner which has the administrative branch of government writing law, administering it, and acting as the judiciary in denying me my rights.

There seems to be some misunderstanding as to what information has circulated about what I will be doing. As a matter of record I state that the figures which have

been provided were accurate in a worst case situation. In the letter written to me on July 17, 1989 over the signature of Mr. Bielawski the amounts and quantities of water and waste were mistakenly amplified to figures which would put my operation in your jurisdiction. An error which may have evolved from a conversation your agent may have had with a researcher in Florida. Since the time of my providing your office with that name I have since provided you with the name of the president of the Florida Alligator Farmers Association. He will provide you with the name of the agencies in Florida which administer water protection (keeping in mind that most of the operations in Florida are located on the ground water table in swamps) and Health.

As far as my paying this fee and becoming a permitted operation I object and pay this money in protest as my building

permits will be denied along as you insist and inform the Washoe County Health department that I come within your jurisdiction.

Due to this inability to obtain building permits because of your insistence that I obtain a discharge permit I am paying this fee. My economic survival depends upon my getting a crop started this year.

I have referenced certain documents in this letter. I have included copies of them for your review. I request that you make all haste in your issuance of this unnecessary permit as I have to build ten buildings before October. For the co-operation I seem to be receiving in you willingness to get this permit issued in a hurry I thank you.

Sincerely;

Anthony J. Bator Jr.
cc: L.H. Dodgion
Al Porta
Wendell McCurry
Doug Coulter
Bart Hooley

JUDGEMENT DEPARTMENT 6 CV89-7653
DATED FEBRUARY 7, 1990

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND FOR THE COUNTY OF WASHOE

ANTHONY J. BATOR JR.,

Petitioner, JUDGEMENT

vs.

WASHOE COUNTY **BUILDING DEPT.,**
Respondent,

WASHOE COUNTY
Real Party in Interest

This matter having come on regularly for hearing on January 25, 1990, Petitioner, Anthony J. Bator, Jr., appearing in proper person and Russell S. Nash, Jr., Deputy Washoe County District Attorney, appearing as counsel for the Respondents, and the Court having reviewed the Petitioner's Points and Authorities in support of his Application for Writ of Mandamus and the Respondents' Points and

Authorities in opposition thereto, and having heard the oral arguments of Petitioner and Counsel and being fully advised in the premises, the Court finds the following facts and states the following conclusions of law:

The purpose of the mandamus provisions of our law is to provide an extraordinary remedy under circumstances in which it is clear that the remedy is warranted. The writ of mandamus should be resorted to only when the usual and ordinary remedies fail to afford adequate relief and where, otherwise, there would be a failure of justice. Mandamus will not apply unless a clear legal right to the remedy is shown.

The burden of establishing a right to the remedy is imposed by law upon the Petitioner. The availability of an alternate remedy or the failure to demonstrate the clear right to the

mandamus compels denial of the writ.

The Uniform Building Code of 1985, as adopted by reference through the Washoe County Code, Section 100.010, plainly authorizes the Building Department and the appropriate "building official" in that department to have plans pursuant to a building permit application reviewed by other departments, as appropriate, to determine if they conform with the requirements not only of the Washoe County Code and the Uniform Building Code, but other pertinent laws and ordinances. In this case, the Washoe County Health District was requested by the Building Department to review Petitioner's plans. In addition, certain matters under the jurisdiction of the State Division of Environmental Protection were referred to that division for review.

Petitioner has not demonstrated, by clear and convincing evidence, that the

State Division of Environmental Protection and the Washoe County Health District are without jurisdiction to conduct this review.

The Washoe County District Health Department has jurisdiction under NRS 439.410 to conduct a review consistent with its obligation and authority as to public health matters in this county.

The Court does not agree with the Petitioner's analysis that because a project proposed in a building permit application may not constitute a public nuisance as defined in NRS 202.450, it therefore follows that the Health District and the State Division of Environmental Protection are without jurisdiction to conduct a review.

THEREFORE, IT IS HEREBY ORDERED AND ADJUDGED:

1. That the Peremptory Writ of Mandamus applied for is herein denied;

2. That the Alternative Writ of Mandamus granted herein is discharged.

DATED this 7th day of February, 1990.

____
District Judge

MOTION TO PROCEED WITHOUT AN ATTORNEY
DATED: March 13, 1990

CASE NO. 20862

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANTHONY J. BATOR)
Petitioner - Appellant)
)
)
V.) MOTION TO PROCEED
) WITHOUT
) AN ATTORNEY
WASHOE COUNTY BUILDING DEPT.)
Respondent - Appellee)
)
)
WASHOE COUNTY)
Real Party in Interest)

COMES NOW Appellant, Petitioner, Anthony J. Bator, and hereby moves, pursuant to rule 46(b) of the Nevada Rules of Appellate procedure, that petitioner's appeal be accepted in proper person.

Dated this 13 day of March, 1990.

Anthony J. Bator
Pro se
1605 Ambassador Dr.
Reno, Nevada 89523
(702)747-3964

BRIEF FOR THE APPELLANT
DATED: MARCH 13,1990

IN THE SUPREME COURT OF THE STATE OF NEVADA

CASE NO. 20862

ANTHONY J. BATOR

Petitioner-Appellant

v.

WASHOE COUNTY BUILDING DEPARTMENT

Respondent-Appellee

WASHOE COUNTY
Real Party in Interest

On appeal from the Second Judicial District Court of the State of Nevada in and for the County of Washoe

---

BRIEF FOR THE APPELLANT

ANTHONY J. BATOR
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TABLE OF CONTENTS

Subject	Page
Table of Contents	i
Table of Authorities	ii
Statement of the Issues	1
Statement of the Case	2
Argument 1	5
Argument 2	16
Conclusion and Relief Sought	20

TABLE OF AUTHORITIES

TITLE PAGE

CV89-4760........................8

MEMORANDUM OF CONDITIONS STATED BY BOARD OF ADJUSTMENT...........18

NAC 445.071.......................6

NAC 445.074......................13

NRS 202.450.......................9

NRS 439.370.......................9

NRS 439.410.......................9

NRS 444.650.......................9

NRS 445.131-445.354..............10

NRS 445.147......................12

NRS 445.176......................12

NRS 445.186......................11

NRS 445.253.......................7

NRS 445.2553.....................12

NRS CHAPTERS 547-576..............9

STATEMENT OF NEVADA HANDBOOK OF BEST MANAGEMENT PRACTICES.....8

U.S. DEPT. OF AGRICULTURE WATER QUALITY INDICATORS GUIDE...8

U.S. P.L. 92-500..................6

U.S. P.L. 92-500 SECTION 208........6

U.S. P.L. 95-217, AMENDS P.L. 92-500 INC. SEC. 208.............6

WASHOE COUNTY CODE CHAP.100 SECT. 303(A).....................15

WASHOE COUNTY PLAN 208..............7

CR-1 PETITION FOR WRIT OF MANDAMUS (WITH EXHIBITS A,B,C AND D ATTACHED)

CR-2 AFFIDAVIT

CR-3 ORDER DIRECTING ISSUANCE OF ALTERNATE WRIT

CR-4 ALTERNATE WRIT OF MANDATE

CR-5 AFFIDAVIT OF SERVICE

CR-6 ANSWER

CR-7 MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO PETITIONER'S APPLICATION FOR WRIT OF MANDAMUS

CR-8 TRANSCRIPT OF COURT OPINION HELD JANUARY 25,1990

CR-9 JUDGEMENT

CR-10 NOTICE OF ENTRY OF JUDGEMENT

CR-11 NOTICE OF APPEAL

CR-12 DESIGNATION OF RECORD OF APPEAL

CR-13 PROOF OF SERVICE

CR-14 PLAINTIFF'S EXHIBIT # 1

CR-15 PLAINTIFF'S EXHIBIT # 2

TABLE OF AUTHORITIES

TITLE	ORIGINAL CITATION PAGE
CV89-4760	Court Record 8 p. 12
MEMORANDUM OF CONDITIONS STATED BY BOARD OF ADJUSTMENT	CR-14
NAC 445.071	CR-1, CR-8 p.41
NAC 445.074	CR-1, CR-8 p.41
NRS 202.450	CR-8 p.16
NRS 439.370	CR-8 p.15
NRS 439.410	CR-8 p.37
NRS 444.650	CR-8 p.42
NRS 445.131-445.354	CR-1, CR-8 p.42
NRS 445.147	CR-1, CR-8 p.42
NRS 445.176	CR-8 P.42
NRS 445.186	CR-1, CR-8 p.42
NRS 445.253	CR-1, CR-8 p.42
NRS 445.2533	CR-1, CR-8 p.42
NRS CHAPTERS 547-576	CR-8 p.16
STATE OF NEVADA HANDBOOK OF BEST MANAGEMENT PRACTICES	CR-8 p.39
U.S. DEPT. OF AGRICULTURE WATER QUALITY INDICATORS GUIDE	CR-15
U.S. P.L. 92-500	CR-1

U.S. P.L. 92-500 SECTION 208
.... CR-1, CR-8 p.44

U.S. P.L. 95-217, AMENDS P.L. 92-500
INC. SEC.208..................CR-8 p.46

WASHOE COUNTY CODE CHAP.100
SECT. 303(A)......................CR-1

WASHOE COUNTY PLAN 208..........CR-8 p.44

STATEMENT OF THE ISSUES

Washoe County, the REAL PARTY IN INTEREST, in this case has attempted to compel petitioner through a maze of administrative agencies and hearings to pursue his chosen occupation; a farmer. Bator, after spending 11 months trying to show the county that what it is attempting to compel him to do is something which is not necessary, and in fact, against the law; petitioned the court to compel the Washoe County Building Department to issue his building permits. Bator is in compliance with all pertinent laws.

The county is attempting to compel Petitioner;

1) To acquire a Discharge Permit under the National Pollution Discharge Elimination System permits program.

2) to accept the fact that he will be a public nuisance.

3) to accept that he is a "treat-

ment works" defined as a municipal sewage treatment facility.

4) to prove that he has not stolen water rights.

The county claims that it is within the jurisdiction of the District Health Department to require these things. Petitioner demonstrates by law that it is not.

STATEMENT OF THE CASE

This Writ of Mandate arose as a result of petitioner, Bator, and his inability to acquire building permits to construct 10, 30 foot diameter buildings out of concrete, block, and steel. Petitioner, Bator appeared before the county board of adjustment on May 4, 1989 and presented his position that he did not require any type of special use permit, any type of discharge permit or any type of zone change to conduct his agricultural activity on his agriculturally zoned property. The board of adjustment found against him requiring him to have a special use permit with conditions of operation. Petitioner, Bator proceeded to court to have the court determine if a special use permit was required. The special use permit itself being the only regulation compelling petitioner, Bator, the need for a

discharge permit as well as submission of an extensively prepared plan of operation to the district health department. In case number CV89-4760 heard in Department 4 Washoe County District Court, the court found no special use permit was required because no statute, law or ordinance required one. The court also found that Petitioner, Bator was an agricultural user of the land and if Petitioner was in compliance with Washoe Building Codes permits should issue. County failed to appeal. The county failed to issue building permits. Bator places motion before court to use its powers to enforce its order. Respondent, Washoe County Building Department then contended Bator was not in compliance with the Washoe County Building Code. An order ensued stating that this was a new cause of action. Petitioner, Bator then filed a new Petition for a Writ of Mandamus

CV89-7653 seeking the court to compel the issuance of Bator's building permits claiming it is the responsibility of the head of the Washoe County Building Department to know the specific jurisdiction of other Washoe County agencies. The health departments claim that Petitioner, Bator, is building a treatment works under Chapter 445 of the Nevada Revised Statues in unfounded and outside of Health Departments Jurisdiction. Despite the District courts ruling that Bator is an agricultural user of the land Building Department continues to accept the health departments off point contention that Bator is building a treatment works. Under federal, state and local law a treatment works is defined as a federally financed municipal sewage treatment facility. Said laws require plans for such a facility to be submitted to the state Department of Environmental

Protection, application and approval of a discharge permit to surface waters through a public forum, as well as submit to regulation by an empowered governmental agency to control what material is processed through said facility. Washoe County District Health Department Claims to be this agency. As a result of Building Department failure to verify health departments jurisdiction and allegation Bators building permits have not been issued. Judge Adams denies the petition for an issuance of petitioner's building permits.

ARGUMENT I

Bator, Petitioner and Appellant owns approximately 41 acres of property in Warm Springs Canyon; the southwest corner of the south west corner of township 22 range 20 east section 26 Mount Diablo Meridian. On this property Bator has plans to raise alligators for meat and

hide. His plans include the building of 10 concrete and block buildings to contain approximately 2000 alligators under maximum operating conditions. These buildings are 30 foot in diameter approximately 10 feet tall in the center and enclosed with a wooden roof. Completely secure and completely fenced. In these buildings Bator will have ponds which will hold approximately 467 gallons of water. This water will be drained from these buildings not more than once a day. The water will the be stored in a holding pond for use in raising crops. It will be applied to 20 acres of land presently being prepared for cultivation. this 467 gallons of water per day will contain fecal matter from these ten buildings. This water will then be used to irrigate and fertilize crops. NO EXIT WATER WILL EVER LEAVE BATORS PROPERTY. This is a common agricultural

practice. The rate of application of manure under maximum operating conditions will be 7 tons per acre per year. Common rates of application of manure in the agricultural community are as high as 25 tons per acre which is neccessary to return nutrients and equivalent mass. Significantly more water than this 4670 gallons per day will be required to raise a crop. This will be done from the water rights which have already been moved to the point of diversion on Bators property by the state water engineer. No surface water is on or near Bators Property. In fact Bators property is over 10 miles from any surface water.

Under Article 1 section 8 clause 3 of the United States Constitution, the commerce clause, the federal government claims jurisdiction over the navigable waters, as highways, of the United States. As a result of the

degenerating quality of the nations waterways the federal government in 1972 enacted Public Law 92-500, The water Pollution Control Act of 1972. This act was amended in 1977 by P.L. 95-217, popularly known as the Clean water Act. To enlist the states in enforcement of these statues the U.S.Government granted revenues to the individual states if they were in compliance with, and enforced these statutes (see NAC 445.071). In this act section 208(a)(2) states;

> "The Governor of State, within sixty days after publication of this subsection, shall identify each area within the State which, as a result of urban-industrial concentrations or other factors, has substantial water quality control problems. Not later than one hundred and twenty days following such identification and after consultation with the appropriate elected and other officials of local governments having jurisdiction in such areas, the Governor shall designate (A) the boundaries of each such area, and (B) a single representative organization,including elected officials from local governments or

> their designees, capable of developing effective area wide waste treatment management plans for such area. The Governor may in the same manner at any later time identify any additional area (or modify an existing area) for which he determines area wide waste treatment management to be appropriate, designate the boundries of such area, and designate an organization capable of developing effective area wide waste treatment management plans for such area.

Further in this act in Section 208(b)2(F)

> "a process to (i) identify, if appropriate, agriculturally and silviculturally related non-point sources of pollution, return flows from irrigated agriculture, and their cumulative effects, including runoff from manure disposal areas, and from land used for livestock and crop production, and (ii) set forth procedures and methods (including land use requirements) to control to the extent feasible such sources:"

Pollution only within an area defined under section 208 (a) (2).

In Section 502 General provisions for the carrying out of this federal act states sec. 502(14)

> " The term 'point source' means any discernable, confined and discrete convey-

> ance, including but not limited to any ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation or vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture."

Discharged to the jurisdictional limits of the Act; the navigable surface waters of the United States in those areas designated by section 208 (a) (2). (See NRS 445.253). Those areas identified by the Administrative branch of government were compiled in the Washoe County 208 Water Quality Management Plan, compiled by the Washoe Council of Governments Department of Regional Planning. On page III-20 is a map of the Truckee River Basin. It is identified as that portion of Washoe county to which this act applies in a letter from the United States Environmental Agency Dated November 6, 1978 and included in appendix B of the Washoe

county Plan. Bator's Property LIES OUTSIDE the Truckee River Basin. If Bators property were inside one of these designated areas the agency designated to administer this body of law would have to submit to Bator a plan of operation from the STATE OF NEVADA HANDBOOK OF BEST MANAGEMENT PRACTICES. If Bator refused to comply with these practices and some type of pollution of surface water ensued said agency would have the right to seek injunctive relief as stated in the state publication REGULATIONS FOR CONTROL OF WATER POLLUTION FROM DIFFUSE SOURCES petitioners exhibit "D". Establishing pollution existed would be done through methods described in WATER QUALITY INDICATORS GUIDE: SURFACE WATERS petitioners Exhibit "2".

Section 402 of the Water Pollution Control Act establishes the "NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM"

the said permits County Health insists Bator Obtain. In Section 402(1)

> "The Administrator shall not require a permit under this section for discharges composed entirely of return flows from agriculture, nor shall the Administrator directly or indirectly, require any State to require such a permit."

Clearly the law states again that Bator is not required to acquire the demanded permit.

In case no. CV89-4760 The Washoe County District Court found that petitioner was an agricultural user of the land. The respondent in that action was the Washoe County Building Department, with Washoe County being the Real Party In Interest, who were represented by Rusty Nash of the Washoe County District Attorney's office, Civil Division. It was not appealed.

Washoe County in its MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO PETITIONER'S APPLICATION FOR WRIT

OF MANDAMUS contends that under NRS 439.410 the Health Department has jurisdiction to

> (a) Prevent and control nuisances.
> (b) Regulate sanitation and sanitary practices in the interests of the public health
> (c) Provide for the sanitary protection of water and food supplies; and
> (d) Protect and promote the public health generally in the geographical area subject of the health district.

In response to (a) and (b) Chapter 202 CRIMES AGAINST PUBLIC HEALTH AND SAFETY section 202.450 (4) States:

> "Agricultural activity conducted on farmland consistent with good agricultural practice and established before surrounding nonagricultural activities is not a public nuisance unless it has a substantial adverse effect on the public health or safety. It is presumed that an agricultural activity which does not violate a federal, state or local law, ordinance or regulation constitutes good agricultural practice."

This places agriculture outside of the jurisdiction of the District Health Department. Chapters 547-576 of the Nevada

Revised Statues establishes the state Department of Agriculture and constitute a body of law dealing with agriculture. This is amongst the clearly established law that has Bator seeking a Writ of Mandate.

In response to section (c) District Health Department has formulated a set of regulation to provide for sanitation and sewage. These regulations are written pursuant to chapters 439.370 and chapter 444.650. Section 439.10 establishes the Health Departments powers and jurisdiction as stated in a,b,c,d above. Chapter 444 Deals with sanitation. Section 444.650 States:

> "Regulations to control use of individual systems."
> 1. The state board of health shall adopt regulations to control the use of an individual system for disposal of sewage in this state. Those regulations are effective except in health districts in which a district health has adopted regulations to control the use of an individual system for disposal of sewage in that district.
> 2. A board which adopts such regulations shall consider and take

> into account the geological and topographical characteristics of the area within its jurisdiction.
> 3.The regulations adopted pursuant to this section must not conflict with the provisions of NRS 445.131 to NRS 445.354, inclusive, and any regulations adopted pursuant to those provisions.

The county health department is well within its jurisdiction when it checked and approved Bator individual septic system attached to the home he intends to build at this location. This has been done.

Regarding NRS Chapter 445 WATER CONTROL;AIR POLLUTION, this is the body of law administer by the State Environmental Commission. It is under their jurisdiction that these laws are enforced; Not Washoe County or the Washoe County District Health Department. In the Memorandum of points and authorities submitted to the district court County Council States on page 3 line 7;

> "the construction of any treatment works cannot be initiated without

> approval of plans and specifications thereof."

Petitioner agrees but points out he is not a treatment works. "Treatment works" as defined in the NRS Chapter 445.186

> ""Treatment works" means:
> 1.Any devices and systems used in the storage, treatment, recycling and reclamation of municipal sewage or industrial wastes of a liquid nature, including intercepting sewers, outfall sewers, sewage collection systems, pumping and other equipment and their appurtenances;
> 2.Extensions, improvements, remodeling, additions and alterations of any device of system mentioned in subsection 1.
> 3.Units essential to provide a reliable recycled supply such as stand-by treatment units and clear well facilities.
> 4.Any works, including site acquisition of the land that will be an integral part of the treatment process or is used for ultimate disposal of residues from such treatment; and
> 5.Any other Method of system for preventing, abating, reducing, storing, treating,separating of disposing of municipal waste, including storm water runoff, industrial waste or waste combined storm water and sanitary sewer systems.

Clearly Bator does not fit into this category. If this law were not enacted by the Nevada Legislature, Nevada would be in violation with The Water Pollution Control Act of 1972 and would and would not be eligible to receive federal funds to construct the facilities described in 445.186. The Portion of those funds supplied by the federal government can range up to 85% of construction costs. As a result of this federal funding the Nevada Environmental Commission can regulate what is processed through these facilities as stated on the WPCA.

Having established earlier that Bator facility was neither point source nor a non-point source under the designation of effected areas, Bator feels compelled to establish the intent of the law to avoid confusing the court and clearly establish that the District Health Department is operating outside of its

jurisdiction. NRS 445.147 states;

> "Diffuse Source" defined. "Diffuse source" means any source of water pollution which is diffused to the extent that it is not readily discernible and cannot be confined to a discrete conveyance. This term is intended to be equivalent to the term "non-point source as used in federal statutes and regulations.

NRS 445.176 States:

> "Point source" defined. "Point Source" means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft from which pollutants are or may be discharged. The term does not include return flows from agriculture."

If Bator were located within the jurisdictional control of this act he would clearly be a diffuse source if he were in fact discharging water into a river as a result of over-watering the crops he will have in production.

The Control of "diffuse sources" is dealt within NRS 445.2533 (2)

> "The Department (environmental) shall delegate, to each county or city which so requests, other than a county which NRS 244A.571 and 244A.573 apply or a city within such a county, the administration of the department's control of diffuse sources, if the director finds that the county or city has the necessary money and staff to administer the program effectively. If such a delegation is made both to a county an to a city within it, the city has authority within its corporate limits and the county has authority outside those limits.

This is consistent with Federal law requiring proven expertise of the administrators of the program to insure its proper application. Failure to do so would jeopardize federal grants.

It is unclear whether Washoe County has acquired this authority. Certification to administer this program has been requested by Bator, but never supplied. Clearly From the letter attached to petitioner's Petition for Writ of Mandamus "Exhibit A" the Health Department has never been given jurisdiction to

Administer the National Pollution Discharge Elimination System permits program. Their lack of familiarity with the REGULATIONS FOR CONTROL OF WATER POLLUTION FROM DIFFUSE SOURCES, petitioners exhibit "D", would indicate they have not applied for and been granted this authority. Petitioner's Exhibit "2" is a publication put out by the U.S. Department of Agriculture Demonstrating the techniques to use, consistent with state regulations, to determine water pollution from non-point or diffuse sources.

The final Claim presented by the County Council that Bator's facility is an aqua-cultural facility must be refuted. Under the NAC Chapter 445.074 Aqua-cultural facilities are defined;

> "Aquatic animal production facility" defined. "Aquatic animal production facility" means a hatchery, fish farm or other facility which contains, grows or holds:
> 1.Fish or other aquatic animals in ponds, raceways or other similar

> structures for purposes of production and from which there is a discharge on any 30 days or more per year, but does not include:
> (a)Closed ponds which discharge only during periods of excess runoff; or
> (b)Facilities which produce less than 20,000 pounds of aquatic animals per year.
> 2.Any Species of fish or other animal life (other than carp (Cyprinum carpio), goldfish (Carrasius auratus) or brown trout (Salmo Trutta)) non-native to the United States as defined in "Special Publication No. 6" of the American Fisheries Society entitled "A List of Common and Scientific Names of Fishes from the United States and Canada" and from which there is a discharge at any time.

Clearly Bator is not required under this statue to acquire a discharge permit either as he will never have any discharge.

To clarify why a fish hatchery would need a discharge permit it is important to understand how they operate. Fish require massive amounts of water for their gill to work. This massive amount of water is pumped most commonly from a well in Nevada, but in other states taken from

a river, stream or creek depending upon water quality and quantity, and run through raceways in which the fish swim. There is very little consumptive use prior to discharge of this water. Most of this water is returned to adjacent surface waters. See State document LAND APPLICATION OF WASTE WATER IN NEVADA page 123. A publication of the State of Nevada Department Of Conservation and Natural Resources Division of Water Planning.

Bator's Gators have lungs and no water will be discharged to surface water of the state of Nevada. EVER.

Having refuted all the of Counties contentions with the law Bator now argues the issue of jurisdiction as described in the Washoe county code Chapter 100. Section 303(a) states;

> "The application, plans and specifications and other data filed by an applicant for permit shall be reviewed by other departments of this jurisdiction to verify compliance with any applicable laws

under their jurisdiction....."

Through this brief the appellant has clearly and repeatedly demonstrated that the Washoe County, and the Washoe County Health Department have no jurisdiction to deal with the laws they are attempting to compel petitioner to follow as they fall outside of their area of expertise. The Washoe County Building Department has a responsibility to the Applicant to know the limits of the authority vested in the departments of government to which he is to submit plans for approval. In the instance before this court today Petitioner has repeatedly informed the Building Official of the lack of jurisdiction of the Washoe County Health Department. This same building official had a responsibility to applicant to submit to his counsel Bator's allegations. It is the responsibility of Building Departments counsel to verify

law; not some low level administrative county employees in the persons of Douglas Coulter and Carl Cahill and Mike Harper.

ARGUMENT II

The second basis for review of this case by the Nevada Supreme Court is the lack of impartiality of Judge Brent Adams. The Judges conduct in the court room to the petitioner was clearly biased. Petitioner believes it was the responsibility of the respondent to show why petitioners permit has been denied.

Upon submission of respondents answer to petitioners writ and pleading in court explaining why petitioners building permits are being denied, petitioner refuted the claims of respondent. Judge Adams actions were to build the case of the respondent until he, Judge Adams, felt comfortable denying petitioner's Writ.

From the opening moments of the

hearing the Judge lead the respondent and badgered the petitioner (see Page 25 line 17,18, and page 48 line 8). The answer submitted by the District Attorney's office to the petitioner was late as noted on the stamp of the clerk of the court as well as grossly inaccurate. Petitioner feeling secure in his ability to refute any argument the D.A. could present did not then nor now object. It did however contain misstatements of fact. Petitioner had clearly been before the County Board of Adjustment the minutes were presented as "exhibit 1".

Regarding comments made about the health department and verification of water rights respondents "exhibit A" if Judge Adams believes that it is within the authority of the District Health department to verify water rights as he so indicated in the hearing he obviously does not understand the manner in which our

government is organized. We do have a State Water Engineer. This is his responsibility. If Bator were to violate the water laws of the state of Nevada it would be up to the state to charge him with a crime.

If Judge Adams believes it is within the authority of one Doug Coulter to negate a judicial decision and the findings of the County Board of Adjustment he has no business sitting on the Bench.

In the opening moments of this hearing Petitioner, Bator, surmising the partiality of Judge Adams, and his unwillingness to permit him to present his case Bator entered into the record the necessary laws to have this issue decided by this court, concededly in a very disorganized fashion . Given the obvious prejudicial treatment of the court I did have a tendency to speak rather rapidly.

In the transcripts of the day the

respondent brought up issues before the court. These issues were clearly refuted by the Petitioner, Appellant. Judge Adams attempted to reduce the case to an issue of Bator not exhausting his administrative remedies. No evidence was introduced to support this contention by respondent whose response to Petitioners writ was pure textbook. Judge Adams completely disregards the evidence showing Bator had been before the board of adjustment. On page 21 of the transcripts Judge Adams inquires "Wouldn't your time have been spent these last several months addressing these issues raised in the letter instead of litigating the question of their authority to send the letter?" He was attempting to return Bator to the point he was at months ago. In the interest of brevity and efficiency the issue was reduced to the controversy involved, which the Judge refused to address (page thirty

six of the transcript lines 19; his summation proceeding line 19 being a gross misstatement of the facts (see Exhibit #1) and my contentions in court) and simply reflects his unwillingness to even address an issue which might have an adverse effect on the self appointed authority of the bureaucrats of Washoe county.

The transcripts reflect Judge Adams was informed Bator had supplied information to the various branches of Washoe county government and these contentions were neither denied nor refuted by Respondent, who would have been committing perjury had such an allegation been made. The facts are that Bator spent FOUR MONTHS on a full time basis trying to get the people in the health department, building department, planning department and district attorney's office not to listen to Doug Coulter and Mike Harper and to look at the law. But what has the law to

do with this issue anyway? (in reference to the attitude of the administrators of Washoe Counties Government).

The exchanges of the Judge to the Petitioner were abrupt and curt. He repeatedly attempted to mis-state the case for the Petitioner and keep him from presenting his case. Though the transcripts reflect this to some extent I only wish I could have video taped Judge Adams conduct. It would clearly establish his lack of judicial impartiality. In dealing with respondent, Judge Adams asked if he was done with his presentation. He never showed petitioner the same courtesy; in fact, as the record show he never permitted me the opportunity to effectively present my case.(page 53 line 14 amongst others.)

In closing I would like point out that Judge Adams made his ruling from the bench. After having spent months investi-

gating the law so that I might understand it, I hardly perceive it possible for anyone to make a decision without even examining the evidence.

STATEMENT AND PRECISE RELIEF SOUGHT

As an agricultural user of the land using common agricultural practices Bator has been denied the use of his land, his property, over a year of his life, and equal protection of the law. Having clearly shown that Washoe county is incorrect in denying Petitioner (appellant) his building permits Bator preys before this court to vacate the district courts judgement and compel the Washoe County Building Department to issue the long overdue building permits.

DATED this 12 day of March, 1990

Anthony J. Bator
Pro se

APPENDIX TO BRIEF;IN NEVADA SUPREME COURT
DATED: FEBRUARY 13, 1990

IN THE SUPREME COURT OF THE STATE OF NEVADA

CASE NO. 20862

ANTHONY J. BATOR JR.

Petitioner - Appellant

v.

WASHOE COUNTY BUILDING DEPARTMENT

Respondent - Appellee

WASHOE COUNTY
Real Party in Interest

On Appeal from the Second
Judicial District Court of
the State of Nevada in and
for the County of Washoe

BRIEF FOR THE APPELLANT, APPENDIX

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TABLE OF CONTENTS

Docket Entries 2

Washoe County 208 Plan
Page III 20 4

Washoe County 208 Plan 5
Appendix B

Transcript - Hostility of Judge 6

Transcript - Ruling From Bench 10

Transcript - Failure to permit presentation of Petitioners case in a clear and concise manner 11

Petitioners original "Exhibit C" 12

Judgement 13

TABLE OF CONTENTS

Subject	Where Originally Cited
Docket entries	INDEX
Washoe County 208 Plan Page III 20	CR-8 p.44
Washoe County 208 Plan Appendix B	CR-8 p.44
Transcript - Hostility of Judge	CR-8
Transcript - Ruling from bench	CR-8
Transcript - Failure to permit presentation of petitioners case in a clear and concise manner	CR-8
Petitioners original "Exhibit C"	CR-3
Judgement	CR-9

INDEX

DESCRIPTION*CV89-7653*PENCILED PAGE NUMBER

AFFIDAVIT
(Filed: Dec. 26,1989) 46 to 47

AFFIDAVIT OF SERVICE
(Filed: Jan. 04,1990) 50

ALTERNATE WRIT OF MANDATE
(Filed: Jan. 04,1990) 49

ANSWER
(Filed: Jan. 25,1990) 51 to 55

DESIGNATION OF RECORD ON APPEAL
(Filed: Feb.08,1990) 91 to 92

JUDGEMENT
(Filed: Feb.07,1990) 81 to 83

MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO PETITIONER'S APPLICATION FOR WRIT OF MANDAMUS
(Filed: Jan 25,1990) 56 to 76

NOTICE OF APPEAL
(Filed: Feb. 08,1990) 90

NOTICE OF ENTRY OF JUDGEMENT
(Filed: Feb 07,1990) 84 to 89

ORDER DIRECTING ISSUANCE OF ALTERNATE WRIT OF MANDAMUS
(Filed: Jan 04,1990) 48

PETITION FOR A WRIT OF MANDAMUS (WITH EXHIBITS A,B,C AND D ATTACHED)

(Filed:Dec 26,1989)	1 to 45
PLAINTIFF'S EXHIBIT 1 (ADMITTED JAN.25,1990) (Filed:)	95 to 113
PLAINTIFF'S EXHIBIT 2 (ADMITTED JAN.25,1990) (Filed:)	114 to 184
PROOF OF SERVICE (Filed: Feb.08, 1990)	93 to 94
TRANSCRIPT OF COURT OPINION HELD JANUARY 25,1990 (Filed:Feb 05,1990)	77 to 80

CR-1 PETITION FOR WRIT OF MANDAMUS (WITH EXHIBITS A,B,C AND D ATTACHED)

CR-2 AFFIDAVIT

CR-3 ORDER DIRECTING ISSUANCE OF ALTERNATE WRIT

CR-4 ALTERNATE WRIT OF MANDATE

CR-5 AFFIDAVIT OF SERVICE

CR-6 ANSWER

CR-7 MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO PETITIONER'S APPLICATION FOR WRIT OF MANDAMUS

CR-8 TRANSCRIPT OF COURT OPINION HELD JANUARY 25,1990

CR-9 JUDGEMENT

CR-10 NOTICE OF ENTRY OF JUDGEMENT

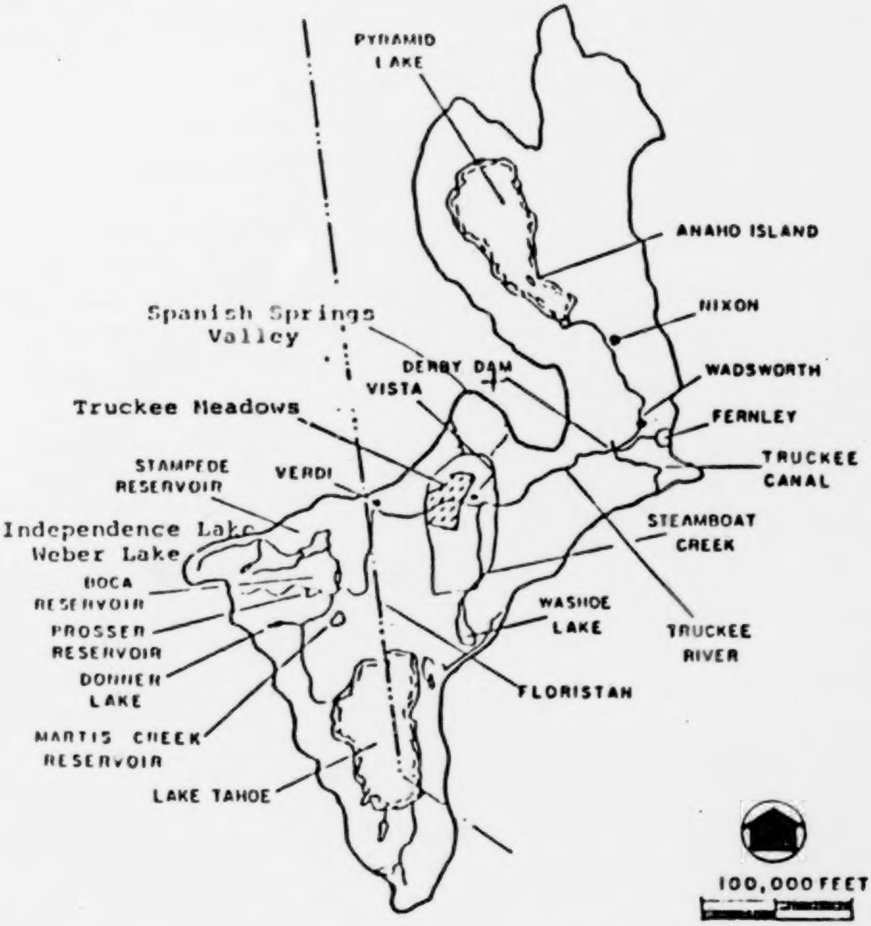
CR-11 NOTICE OF APPEAL

CR-12 DESIGNATION OF RECORD OF APPEAL

CR-13 PROOF OF SERVICE

CR-14 PLAINTIFF'S EXHIBIT # 1

CR-15 PLAINTIFF'S EXHIBIT # 2



TRUCKEE RIVER BASIN

Source [7]

Figure III-4

A11B

NOVEMBER 6, 1978
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
215 Fremont Street
San Francisco, Ca. 94105

Bernard Gulla
Chairman
Washoe Council of Governments
2525 Terminal Way
Reno, NV 89502

Dear Mr. Gulla:

Congratulations on reaching a major milestone in the planning process for water quality in Washoe County. I am pleased to inform you that the Environmental Protection Agency is approving the Water Quality Management Plan prepared by the Washoe Council of Governments (W-COG), subject to the enclosed conditions.

EPA recognizes and appreciates the support given by local elected officials to the 208 planning process. The efforts of those officials, the citizen and technical advisory committees, and W-COG staff have produced a plan which addresses the

control of non-point sources of water pollution in the Truckee River. Although the plan does not include all the elements of 208 planning, it does contain sound technical and institutional decisions on areawide water quality management.

Our conditions of approval are based on the requirements of the Federal Water Pollution Control Act Amendments of 1972, Part 130 and 131 regulations, and the W-COG work plan as amended in September, 1977. As the continuing process successfully meets the approval conditions, full EPA approval will be forthcoming.

It is our pleasure to continue to work together on water quality management planning in Washoe County.

Sincerely,
Original signed by:
Sheila M. Prindiville
FOR
Paul De Falco, Jr.
Regional Administrator

CONDITIONS OF EPA APPROVAL OF THE WASHOE COUNCIL OF GOVERNMENT'S 208 WATER QUALITY MANAGEMENT PLAN

1. sec. 131.11 (a.1)/ Sub-task 2.1. The plan shall note that a large scale map delineating the approved designated and non-designated areawide planning areas has been prepared and is available for public review at the W-COG office. Time period for submittal: December 15, 1978

2. sec. 131.11(a)(2). The Plan shall identify those areas in which facilities planning has been deemed necessary, after consultation with sewage management agencies and the Division of Environmental Protection. Time period for submittal: December 15, 1978

3. sec. 131.11 (c)(1). The Plan shall include an inventory and ranking of municipal dischargers to be used by DEP in the development in the State's project

priority list. Time period for submittal: December 15, 1978

4. sec. 131.11 (c)(3)/sub task 4.1. The Plan must include population projection for a 20 year planning period. Time period for submittal: December 15, 1978

5. sec. 131.11 (c)(5)/sub task 4.1. The Plan shall indicate when the projected land use plan developed by the Regional Planning Commission was adopted by the appropriate governing bodies. Time period for submittal: December 15, 1978

6. sec. 131.11(d)(j).

a. The Plan shall include an assessment of water quality problems caused by categories of nonpoint sources of pollutants other than agricultural return flows and urban stormwater runoffs. Time period submittal: To be agreed upon in workplans of the continuing planning process.

b. Identification and evaluation of control needs for additional nonpoint

sources will also be included in the 208 plan. Time period for submittal: To be agreed upon in workplans of the continuing planning process.

7. sec.131.11(e). Given the results of the ongoing water quality study on the Lower Truckee, and the JWPCP expansion/upgrading facilities plan and EIS, the Plan shall recommend revisions to water quality standards downstream of Vista. Time period for submittal: To be agreed upon in workplans of the continuing planning process.

8. sec.131.11(f,g,h,i,k,m). The plan shall include total maximum daily loads, point source load allocations, municipal waste treatment needs, residual waste control needs, and target abatement needs. These elements, which were excluded from the initial planning effort by mutual agreement by W-COG, DEP,EPA, must be addressed in the future continuing planning process.

Time period for submittal: To be agreed upon in workplans in the continuing planning process.

9. sec.131.11(n)(2)/sub task 5.4. The Plan shall include those mechanisms necessary for implementing selected nonpoint source controls, including drafts of ordinances for local street sweeping, anti-litter, parking, and drainage control. In addition, the Plan shall contain a financial plan and time schedule for adopting and implementing these ordinances. Time period for submittal: December 15, 1978

10. sec.131(o)/sub-task 5.3

a. The Plan shall document that the three political entities accept the various pollution management responsibilities the have been assigned. Time period for submittal: December 15,1978

b. The Plan shall reference the decision to create a Department of Regional Planning of Washoe County and shall

schedule a date for the Department to become operational. Time period for submittal: December 15, 1978

11. With regard to the status of the Plan relative to the requirements of 40 CFR 131.11, EPA makes this finding:

a. Requirements which have been met, or conditionally met: a; c(2), (4); e; l; n; o; p.

b. Requirements which have been addressed, but may require more detailed consideration, or may necessitate future changes as a result of changing and the need to further consider environmental impacts: b(1), (2); c (1), (3), (5); d; j.

c. Requirements which have not been met f; g; h; i; k; m.

12. Task 1, Goals Definition: Integration of air and water quality planning to maximum extent possible is stated as a priority need in the W-COG work plan. In

fulfillment of this need, future 208 planning shall reflect coordination of demographic and land use data as well as integration of water pollution control measures and strategies with those of the Truckee Meadows Air Quality Implementation Plan.

MR. BATOR: It says, Clause 4: "Agricultural activity conducted on farmland consistent with good agricultural practice and established before surrounding nonagricultural activities is not a public nuisance unless it has a substantial adverse effect on the public health or safety. It is presumed that an agricultural activity which does not violate a federal, state or local law, ordinance, or regulation constitutes good agricultural practice."

In the letter that---

THE COURT: Now, what's the argument that that section you just quoted precludes the Washoe County Health Division from making this review under Section 303 of the building code? Is it your argument that under that statute, only the Department of Agriculture may conduct such a review?

MR. BATOR: I'm no different that any other agricultural applier of any place in the United States, your Honor. I am no

different than anybody else. As indicated to me that they intended to stop me from doing this. In the letter dated October 25th, it says "under federal, state, and local regulations." The don't exist, your Honor. I've asked repeatedly since April of last year for those regulations, but they don't exist.

THE COURT: Let's go back to 202.450, Subsection 4. Doesn't NRS 202.450 define the crime of public nuisance? isn't

MR. BATOR: There's no basis in the law for them. They are making arbitrary decisions to make me spend money that are absolutely unfounded.

THE COURT: Do you have any authority other than 202.450 that the Health district may not conduct the review?

MR BATOR: Well, the whole thing amounts down to the environmental protection laws and under a letter that was introduced, the process which the Health Department which is supposed to go through to gain control was never gone through and I'm prepared to cite those citations if you like.

THE COURT: All right. Is this about discharge?

MR. BATOR: This is about discharge, your Honor. You see, the issue that's involved is that the County contends I am infringing upon the public right to clean water.

THE COURT: No. The county contends--at

least by virtue of the record of this case--that there must be an opportunity for the responsible health authorities, which are the Health District and, for certain purposes, the State Division of Environmental Protection to conduct a review of this project for health purposes. That's what the basis is. There is nothing in this record, in the court filings or in the record of the other action to be a threat to think the Health Authority or the Building Department is saying to you, "This is a bad project" or "This is a project that won't be approved".

it's an appropriate example would be to have a rendering plant, something that involved animals wants to move to town and wants to build a facility. There's no reason to think that they are going to commit any crime or conduct an activity that constitutes a public nuisance.

Don't you think that under the Building Code and the statutes we discussed, the Health District is not only empowered and authorized, but is acting very reasonably in the interest of public health if the conduct a review of that project?

MR. BATOR: Your Honor, if I bought a piece of property and I had cows defecating on the ground and spread it around on the pasture, it would be no different. They are attempting to use laws--

THE COURT: I'm not talking about those laws, I'm talking about the statutes. What about the authority under this statute in

the Building Code that was adopted under the County Code? I'm talking about a review.

You challenged in this proceeding the authority of the health District to conduct a review. Your position from your pleadings is that you are entitled now to building permit, this Court should use its extraordinary powers to enforce this writ to issue you a permit; isn't that your contention?

that was proposing this operation, but it's only one side of the coin. I don't know what the Health District might have to say about it and the whole position of the County here today is: Give the Health District an opportunity to make the review, render their decision and based thereon, the Building Department will render its decision and then either a court or the Board of Adjustment can have that record to conduct further proceedings.

MR. BATOR: Your Honor--

THE COURT: I can't sit here and essentially short circuit the entire review process and find as a matter of law that what you told me about described here constitutes a point source or non-point source. That's what we have these entities who have expertise to make these sort of judgements.

MR BATOR: Yes, your Honor. That was

covered in the Board Of Adjustment hearing back in May. Ron Young, who is the Administrator Processor of that hearing agreed with me, I didn't need a special use permit. But the turned it over to the County Counsel and they turned around an said I did.

THE COURT: And you only needed a special use permit?

MR BATOR: The counsel contended in the special use permit I needed a discharge permit from the State

the jurisdiction of the State Division of Environmental Protection were referred to that division, also, for review.

It is not clear to me whether the project envisioned by the building permit application constitutes a point source or a diffuse source: but, because that is so, I am certainly unable to find that petitioner has, by clear evidence, demonstrated that neither the State Division of Environmental Protection or the Washoe County Health District do not have jurisdiction to conduct this review.

Therefore, I am unwilling to issue the Writ to preclude the review from going forward. I find that the Washoe County District Health Department does have jurisdiction under NRS 439.410 to conduct a review consistent with their jurisdiction obligation and authority as to public health matters in this county.

The court does not agree with the

petitioner's analysis that just because a project proposed in a building permit application may not constitute a public nuisance as defined in NRS 202.450, it therefore follows that the Health District and/or the State Division of Environmental Protection is without jurisdiction to conduct a review. Therefore, the petition is hereby denied.

Mr. Nash, would you prepare a written order consistent with this Court's order today?

days or more per year.

Then it has some exceptions which includes enclosed ponds which discharge only during periods of excess runoffs or, B, facilities that produce less that 20,000 pounds of aquatic animals per year. I don't think this production facility fits within the exceptions of that definition. Apparently it is the position of the State Division of Environmental Protection it does not either.

THE COURT: Is there any further authority that eliminates the definition of the term "aquatic animals"?

MR. NASH: That's the only thing I have found in the Nevada Administrative codes.

(Court Opinion previously transcribed.)

MR. BATOR: Your honor, I didn't get tc finish presenting my case. I can show clearly in the statute that I don't need a discharge permit.

THE COURT: Well, you have discussed the statutes at length Mr. Bator. I have reviewed the authorities and this hearing is concluded. Thank you.

(Proceedings concluded)

DEPARTMENT OF CONSERVATION AND NATURAL
RESOURCES

DIVISION OF ENVIRONMENTAL PROTECTION
201 South fall Street
Carson City, Nevada 89710

December 19, 1989

Tony Bator
1605 Ambassador Dr.
Reno, NV 89502

Dear Mr. Bator

In response to your inquiry, the federal Environmental Protection Agency has delegated administration of the National Pollution Discharge Elimination System permits program to the Nevada Division of Environmental Protection. This responsibility has not been re-delegated to any other state of local agency.

I hope that this information adequately responds to your question.

Sincerely,

Richard E. Reavis
Chief, Permits and Compliance
RER/srb:1

JUDGEMENT DEPARTMENT 6 CV89-7653
DATED FEBRUARY 7, 1990

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND FOR THE COUNTY OF WASHOE

ANTHONY J. BATOR JR.,

Petitioner, JUDGEMENT

vs.

WASHOE COUNTY **BUILDING DEPT.,**
Respondent,

WASHOE COUNTY
Real Party in Interest

This matter having come on regularly for hearing on January 25, 1990, Petitioner, Anthony J. Bator, Jr., appearing in proper person and Russell S. Nash, Jr., Deputy Washoe County District Attorney, appearing as counsel for the Respondents, and the Court having reviewed the Petitioner's Points and Authorities in support of his Application for Writ of Mandamus and the Respondents' Points and

Authorities in opposition thereto, and having heard the oral arguments of Petitioner and Counsel and being fully advised in the premises, the Court finds the following facts and states the following conclusions of law:

The purpose of the mandamus provisions of our law is to provide an extraordinary remedy under circumstances in which it is clear that the remedy is warranted. The writ of mandamus should be resorted to only when the usual and ordinary remedies fail to afford adequate relief and where, otherwise, there would be a failure of justice. Mandamus will not apply unless a clear legal right to the remedy is shown.

The burden of establishing a right to the remedy is imposed by law upon the Petitioner. The availability of an alternate remedy or the failure to demonstrate the clear right to the

mandamus compels denial of the writ.

The Uniform Building Code of 1985, as adopted by reference through the Washoe County Code, Section 100.010, plainly authorizes the Building Department and the appropriate "building official" in that department to have plans pursuant to a building permit application reviewed by other departments, as appropriate, to determine if they conform with the requirements not only of the Washoe County Code and the Uniform Building Code, but other pertinent laws and ordinances. In this case, the Washoe County Health District was requested by the Building Department to review Petitioner's plans. In addition, certain matters under the jurisdiction of the State Division of Environmental Protection were referred to that division for review.

Petitioner has not demonstrated, by clear and convincing evidence, that the

State Division of Environmental Protection and the Washoe County Health District are without jurisdiction to conduct this review.

The Washoe County District Health Department has jurisdiction under NRS 439.410 to conduct a review consistent with its obligation and authority as to public health matters in this county.

The Court does not agree with the Petitioner's analysis that because a project proposed in a building permit application may not constitute a public nuisance as defined in NRS 202.450, it therefore follows that the Health District and the State Division of Environmental Protection are without jurisdiction to conduct a review.

THEREFORE, IT IS HEREBY ORDERED AND ADJUDGED:

1. That the Peremptory Writ of Mandamus applied for is herein denied;

2. That the Alternative Writ of Mandamus granted herein is discharged.

DATED this 7th day of February, 1990.

____
District Judge

ORDER DISMISSING APPEAL
Dated: October 29,1990

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANTHONY J. BATOR NO. 20862
Appellant,

vs.

WASHOE COUNTY BUILDING DEPARTMENT
AND WASHOE COUNTY
Respondent.

ORDER DISMISSING APPEAL

This is a proper person appeal from an order of the district court denying appellant's petition for a writ of mandamus.

Appellant contends that the district court erred in denying his petition. This contention is without merit. The district court correctly found that appellant did not carry his burden of proving that the Building Department had a present duty to issue him a permit notwithstanding the objections of the District Health Department. Further, in

light of the remedy available to appellant in the ordinary course of the law if the Building Department erroneously denies him a building permit, see NRS 278.310, the extraordinary remedy of mandamus is not available to appellant. See NRS 34.170. Thus, the district court did not err in deny in denying appellant's petition below.

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that appellant cannot demonstrate error in this appeal, and that briefing and oral argument are unwarranted. See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975), cert. denied 423 U.S. 1077 (1976). Accordingly, we

ORDER this appeal dismissed.(1)

____________________________, C.J.
Young

_______________________________, J.
Springer

_______________________________, J.
Mowbray

_______________________________, J.
Rose

cc. Hon. Brent T. Adams, District Judge
Hon. Mills Lane, District Attorney
Anthony J. Bator
Judy Bailey, Clerk

(1) In light of our disposition of this case we deny as moot appellant's motion to proceed without an attorney.

MOTION TO RECONSIDER THE ORDER DISMISSING APPEAL
DATED: November 6, 1990.

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANTHONY J. BATOR,

Appellant,

vs.

WASHOE COUNTY BUILDING DEPARTMENT

AND WASHOE COUNTY

Respondent.

MOTION TO RECONSIDER THE ORDER DISMISSING APPEAL

COMES NOW Anthony J. Bator and requests the court to examine the proceedings in the above case as it is obvious this has not been done.

This court cites NRS 34.170 and NRS 278.310 as a basis for denial of suit. Mr. Bator has been before the board of adjustment with this issue, specifically the issue of a discharge permit. The board held with the district health department,

that a discharge permit was required. We are at a stand-off and require this to be adjudicated. IF the court finds that Mr. Nash's comment's prevail, that this subject was not part of the agenda before the board of adjustment I will promptly go to the criminal division of the district Attorney's office and swear out a complaint for perjury. In my claims at the trail I stated and restated that it was the position of the board that I need a discharge permit. This position has not changed even after having visited and discussed the subject with my county commissioner.

This is the issue of the suit. With the law that was introduced before Judge Adams Mr. Bator proves he is not required to obtain a discharge permit. Having made his decision from the bench without even having read the laws introduced by petitioner, Bator, his decision is

unwarranted.

In reviewing the action. Judge Adams ordered the Washoe County Building Department to show cause as to why Mr. Bator's Building Permits were being denied. In court Rusty Nash, Attorney for the Washoe County Building Department made two allegations. First, that Petitioner to the court had not exhausted his administrative remedies by appearing before the Washoe County Board of Adjustment. This had been done. It was the position of the board that Bator was required to obtain a discharge permit. This is the second allegation made by the Washoe County Building Department in court and the issue of our dispute. This was not made clear in the courtroom before Judge Adams because of his misconduct. The county contends that Bator is required to have a United States NATIONAL POLLUTION DISCHARGE ELIMINATION SYSTEM PERMIT. Other

than this issue Bator is in compliance with all requirements as stated at the trail by Oris Corbridge head of the Washoe County Building Department. The Washoe County Health Department claims to have jurisdiction to administer this system of discharge permits. The law says otherwise. Introduced in evidence was a letter from the state director of the system that clearly states they do not. The law says that you must apply for this authority and participate in an education system to administer this body of law. The washoe county health department has not done this. If they had they would have read the law, been aware that the Appellant is located outside of a section 208 area under the water pollution control act of 1972 and later amended in 1977 and entitled the Clean Water Act of 1977. They would also be aware of the intent of the law and adjudicated history

of the law regarding the fact that it applies to surface waters or injections of pollutants through wells. Neither of which Bator will ever do. They would also be aware that the Clean Water Act specifically states that no agricultural user of the land can be compelled to acquire a discharge permit. Bator has a court order declaring him to be an agricultural user of the land. All of these laws were introduced at the hearing before Brent Adams but because of his arrogance and failure to conduct himself in an honorable manner (i.e. impartial) I was not permitted to sum up my argument in a concise clear manner and present my issue clearly. The tone of the hearing was set by Judge Adams and issues not introduced by either party to the action were argued as a result of introduction by Judge Adams. My Brief before this court does sum up my argument with the laws introduced at the

hearing. You dismiss my appeal without briefing or oral argument which clearly indicates you have not reviewed the law or my issues. I am correct. In order to appeal my case to the U.S. Supreme Court I must give you the opportunity to reconsider your dismissal. This is it.

DATED 11-6-90

Anthony J. Bator
Pro se

ORDER
Filed: December 18, 1990

IN THE SUPREME COURT OF THE STATE OF
NEVADA

ANTHONY J. BATOR, No. 20862

Appellant,

vs.

WASHOE COUNTY BUILDING DEPARTMENT
AND WASHOE COUNTY,

Respondent.

ORDER

This is a proper person appeal from an order of the district court denying appellant's petition for a writ of mandamus. On October 29, 1990, this court dismissed this appeal. On November 6,1990, appellant submitted for filing a motion to reconsideration. Although we have not granted appellant leave to proceed in this matter in proper person, we have considered appellant's motion. Cause appearing, we deny the motion.

It is so ORDERED.

______________________________, C.J.
Young

______________________________, J.
Steffen

______________________________, J.
Springer

______________________________, J.
Mowbray

______________________________, J.
Rose